S. HRG. 101-990

AIRLINE COMPETITION EQUITY ACT OF 1990

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2851

TO ALTER THE FEDERAL RULES APPLICABLE TO COMMERCIAL AIR CARRIERS AT HIGH DENSITY TRAFFIC AIRPORTS

JULY 18, 1990

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AIRLINE COMPETITION EQUITY ACT OF 1990

WEDNESDAY, JULY 18, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m. in room SR-301, Russell Senate Office Building, Hon. Wendell H. Ford (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Carol Carmody, professional staff member; Sam Whitehorn, staff counsel; and John Timmons, minority staff counsel.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Good morning, ladies and gentlemen. We are here this morning to hear testimony on the Airline Competition Equity Act, which was introduced last week by Senator McCain and cosponsored by five Senators on the Commerce Committee including me. You might say that this bill already has broad support on the committee and in the Senate because it will increase competition by abolishing two regulations: one which never worked, and one which has become obsolete.

Back in 1985, the Secretary of Transportation issued a regulation which allowed air carriers to buy, sell and lease takeoff and landing slots at four busy airports. This regulation was an attempt to solve a difficult problem, that of allocation of scarce rights at these airports. Airline scheduling committees had not managed too well, so the buy-sell idea was another stab at the problem.

A majority of this committee and the Senate did not like the rule from the outset and voted to repeal it. We did not prevail in the House, however. We were right to oppose it. What has happened is that air carriers got something for nothing and in many cases profited from selling their slots. Furthermore, new entrants are shut out of these airports because they either cannot afford to buy slots from those who hold them or slots are not even for sale. Competition therefore suffers.

This bill goes beyond eliminating the buy-sell rule. It does away with the slot control at these four airports in 18 months. This is possible because of technological advances in air traffic control which were not in existence when the high density rule was developed. The FAA's central flow control system regulates and meters air traffic based on the capacity of the runway and the airport to accept it. Getting rid of the high density rule does not mean that thousands more flights will be going into these airports every day.

It does mean that traffic will no longer be constrained by artificial numbers, and entry for new carriers will no longer be blocked.

We realize that carriers will need some time to adjust to the end of the high density rule, and new entrants need access before then. That is why the bill allows 18 months and provides for the establishment of a new entrant pool to accommodate those without slots or with less than 12 slots at these four airports.

I want to work with the carriers to assure a smooth transition and to avoid any undue hardship as we move toward the end of a stagnant, outdated and anticompetitive regulation.

I am very pleased to have the sponsor of this legislation as the Ranking Member of this subcommittee, Senator John McCain.

John, if you have any statement at this time, we would be delighted to have it.

OPENING STATEMENT BY SENATOR McCAIN

Senator MCCAIN. Thank you very much, Mr. Chairman. I want to thank you for all the assistance and leadership that you have provided not only on this issue but in so many others concerning aviation in America today. I believe that we are engaged in one of the most important issues for the future of the American people. We are talking about the American people, not airlines, not airports, but the ability of Americans to fly from one part of this Nation or one part of this globe to another at the lowest possible price. I appreciate your leadership and your involvement in these very important issues.

As you know, Mr. Chairman, this subcommittee is engaged in examination of the state of competition in the airline industry over the course of this Congress. We have uncovered much useful information which has led this Senator to conclude that there are pockets of problems affecting the industry which must be addressed if the American people are to enjoy the benefits promised them when we deregulated the airlines in 1978.

I introduced legislation together with Senator Danforth that was designed to address these problems. Unfortunately, we were not able to achieve the consensus needed to move such a bill. I continue to believe that at least some elements of that measure are needed, and I fully intend to pursue them in the next Congress. I intend to pursue these issues as long as there are fewer and fewer airlines, higher and higher prices at concentrated hubs and more and more traces of an anticompetitive, de facto reregulated environment in the airline industry in America. There is every indication of that, including numerous studies by the GAO and others that indicate that we are a long, long, long way from what was envisioned that the shape and nature of the airline industry would be when the airline industry was deregulated in 1978.

Mr. Chairman, thanks to you we were able to achieve consensus on at least one major problem, that of the so-called slots. The result of this consensus is S. 2851, the Airline Competition Equity Act, Senators Ford, Hollings, Danforth, Kasten, Exon and former chairman of the subcommittee, Senator Kassebaum.

Slots harm free competition in the deregulated airline industry. Airlines with slots have a lock on access to these four airports.

Competitors are not able to obtain slots because either they are not available or they are too expensive. Passengers pay higher fares nationwide as a result of industry distortions created by slot controls. That is not just my opinion. The General Accounting Office has conducted extensive investigations into the state of competition in the airline industry. They are the experts. When asked which barriers to entry in the airline industry needed immediate attention, Kenneth Mead of the GAO answered, "my choice is limited to one, slots. Slots do not just affect slot-controlled airports. They affect many airports all over the country." The GAO found that in the market for slots, the buy-sell rule is not working as intended: "The major airlines have accumulated slots in excess of their present needs and are leasing out those they are not currently using rather than selling them. The buy-sell rule's purpose was to open access to slots for new entrants, but not a single carrier has been able to establish new service at slot-controlled airports by purchasing slots."

The GAO also noted the anticompetitive effect of major airlines' ownership of slots. GAO stated, "leasing allows the owner to insure that the user will not be a direct competitor. Further, over 70 percent of the leases have been for 90 days or less. Such short-term leases give little assurance that a long-term investment in service will be worthwhile."

The GAO found that the buy-sell rule has completely failed: "Sales between unrelated carriers have fallen from 110 per quarter in 1986 to 28 per quarter in 1987 and 12 per quarter in 1988. One airline that has sought to buy slots, especially in the National and LaGuardia Airports, reported that most slot owners are not even willing to discuss selling slots, and those who are will not consider selling a slot for less than $1 million per slot." Remember, Mr. Chairman, that they acquired those slots absolutely free of charge. This airline thinks it could not enter the market profitably at these prices.

This legislation employs a threefold approach to solve these inequities: repeal the buy-sell rule; create new slots for new entrants; and force the Transportation Department to review the need for any slot controls.

I would like to explain the provisions of the bill briefly, Mr. Chairman, with your indulgence. First, the legislation would repeal the buy-sell rule outright. This rule has failed to operate as intended. As I stated before, not a single new carrier has established new service by buying a slot. Airlines have solidified their holds on slots and can now operate them greatly insulated from the effects of competition.

Second, additional slots must be created to accommodate the new entrants who cannot obtain slots. This bill would create a pool of 5 percent more slots, in addition to the slots already operated by the airlines, for use only by new entrants. This would allow for flights to more destinations at lower fares.

Third, the DOT will be required to completely review the high density slot rule. With advances in our Nation's air traffic control system, especially the advent of flow control, slots may no longer be necessary. Thus, in 18 months the slot rule will be repealed. The Transportation Department will be able to promulgate a new rule

but only if it can certify to Congress that safety requires slots at a specific airport and that there is no less anticompetitive way to allocate takeoffs and landings.

I am fully aware of some unique concerns regarding this measure. We will hear from some of those witnesses this morning. I will attempt to work with my fellow co-sponsors to address those unique concerns that certain airlines have, Mr. Chairman.

I also would like to note in closing that already the panic button has been struck, that there will be unlimited flights into National Airport, noise levels will increase 20-fold, and we have everybody cranked up on that issue. As you stated, that is clearly not the case. We are talking about marginal increases. We are talking about a 5 percent increase in some cases. We intend to make sure that there is not the kind of assault on the barriers to noise pollution that exists today.

I suggest strongly that those who are already manning the barricades wait and see how this whole thing evolves before they hit the panic button.

Thank you, Mr. Chairman.

Senator FORD. Thank you, Senator McCain.

I might say that in an article in today's paper, two individuals said they were rebuffed by the committee and could not testify. I decided that we did not need two candidates for Congress to come and testify and make it a National Airport question. This is an industry question. It affects the total aviation industry. That was my decision, rebuffed or not.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator FORD. We have the distinguished Senator from Virginia, Senator Robb.

Do you have a statement you would like to make prior to the witnesses testifying?

OPENING STATEMENT BY SENATOR ROBB

Senator ROBB. Thank you, Mr. Chairman. I am, I guess, here in part since I am not normally a Member of this subcommittee but am a member of the full committee.

Senator FORD. You are perfectly welcome.

Senator ROBB. I have not really looked through the full committee list, but I am told I am the only one on the full committee who actually represents one of the airports that is concerned here. There is no particular concern on our part, my part or anybody else's in terms of the sale of slots and what have you. I commend Senator McCain for his interest there.

It is clear that we have some long-term interest in any changes in the high density rule, and I would hope to have an opportunity simply to ask a few questions that might provide the clarification that I think both of you have indicated is appropriate. This is a rule that has been part of the linkage of a number of other fairly intricate arrangements that have had an effect on the airports for something in excess of 20 years.

During the time that I was governor and during the interim period before I came back into the public sector, I did have occasion to work specifically on the airport transfer bill and some of

the considerations that went into that. Again, I think I am reflecting understandable concern. It may be too much, too strong, and I do not mean to suggest alarm in this area but there are areas of this legislation as well as the question of safety that I would like to have an opportunity simply to explore briefly.

I appreciate this chance, and I look forward to the rest of this particular hearing.

Senator FORD. Senator, we are pleased to have you with us here today. Your knowledge and background of this particular problem is welcome.

We also have Senator Kasten, a Member of the subcommittee, here this morning.

Bob, do you have a statement you would like to make before the witnesses are called?

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. I would simply say that I am pleased to join you and the Ranking Member of this subcommittee as an original cosponsor of the Airline Competition Equity Act which is the subject of today's hearing. I thank you, Mr. Chairman, for holding these hearings.

The bill is a necessary step, I believe, toward bringing the benefits of increased competition to the four slot-controlled airports and fairness to those potential competitors who have been unable to gain the necessary access to compete at D.C. National, New York's LaGuardia and Kennedy Airports and also in Chicago at O'Hare.

After adoption of the High Density Rule, the Buy-Sell Rule was adopted to allow market forces to regulate the transfer slots. However, for many reasons this system has not operated as envisioned. Until recently, the only significant transfer of slots has occurred upon the purchase and sale of entire companies, not as individual slot requirements have changed. In fact, with only a 65 percent use or lose rule in effect, we have seen carriers baby-sitting slots, holding onto them at minimal usage rates, rather than having those slots go to competitors who could serve the public with increased service. Now, reports indicate that the going price of a slot is about $1.5 million each. This kind of money for what remains public property is not fair, or pro-competitive.

Concerns over this situation led to the adoption of a provision in the conference report for the fiscal year 1989 appropriations for the Department of Transportation which required the Department commence a rulemaking to free up slots for new entrants and limit incumbents at the four airports. That was passed on September 22, 1988. The rulemaking was to commence within 90 days, with the issuance of a final rule within 270 days after that.

Despite repeated pressure on the Department of Transportation, we are now 21 months out, and, frankly, we are sick and tired of waiting while the situation just gets more and more pressing.

As I stated at a hearing in April, faced with the Department of Transportation's inaction, the time has come for us to legislate the framework of a solution. Thus, this bill would make available up to 5 percent more slots at the controlled airports, repeal immediately the buy-sell rule which has certain carriers reaping huge gains off

of what are public assets, and repeal 18 months after passage the high density rule affecting the four airports.

If something similar to the High Density Rule is found to be necessary as the only solution to circumstances at a particular airport after repeal, then after Congressional notification, such a rule could be adopted on an airport-by-airport basis. With the flow control methods now in place, I believe we can deal with the access and operations requirements in ways that do not hinder the competition that serves the public best.

I look forward to our testimony today, and I am pleased that the Air Transport Association, U.S. Air and others will speak in favor of this legislation. I want to particularly recognize the appearance today of Tim Hoeksema, the President of Midwest Express Airlines based in Milwaukee. It is the type of service that Midwest Express could provide that would enhance the competitive environment at the four slot-controlled airports.

I look forward to continuing to work with the subcommittee on this matter and quick committee action on this legislation. Thank you, Mr. Chairman.

Senator FORD. Thank you, Senator Kasten.

I have a statement that Senator Hollings would like to have included in the record.

[The statement and bill follow:]

OPENING STATEMENT BY THE CHAIRMAN

Today, the Committee's Subcommittee on Aviation will hear testimony on S. 2851, the Airline Competition Equity Act of 1990, legislation which I have cosponsored and which I believe is an important step in addressing the lack of competition and adequate capacity in the airline industry. S. 2851 not only will end what is known in the aviation industry as the Buy-Sell Rule, but also will eliminate in 18 months the Federal Aviation Administration's (FAA) High Density Rule, which limits the number of landings and take-offs, or slots, at four airports: Kennedy, LaGuardia, O'Hare and National.

The High Density Rule, originally enacted as a temporary measure some 21, yes 21, years ago, is more than past its prime. Given the technological changes in the way air traffic is handled today as compared to 1969, when this rule became effective, there is no longer any justification for such a restriction on the use of the system. If such restriction in the future is justifiable for safety reasons, I will support it, and S. 2851 so provides. However, a reassessment of the need for, and soundness of, the High Density Rule is clearly needed.

The elimination of the Buy-Sell Rule reflects a concern that the Commerce Committee has raised before—the outright giveaway of a valuable Federal asset. When the Department of Transportation (DOT) first proposed to give away these Federal rights and allow carriers to reap a windfall, I joined other Senators in strongly urging the Secretary of Transportation not to implement this proposal. Despite these efforts, the rule was issued on December 16, 1985. The Committee then held a hearing on and reported S. 1966, introduced on December 17, 1985, which prohibited the buying and selling of these valuable rights. This is clearly an issue about which the Committee has had concerns for a long time.

The bill under review today would enable new entrants to begin to serve now the four airports I have mentioned. Such new entrants essentially have been frozen out of these airports since the Buy-Sell Rule was put into place. Carriers wanting to provide service was put into place. Carriers wanting to provide service have not been able to—but those already holding slots have been able to sell or lease them for profit. This anticompetitive situation must change.

I know we will hear from at least one witness today who will say that not allowing further sales is not fair: after all, airlines who have purchased slots under the Buy-Sell Rule have paid significant sums for these assets. Yet, even the FAA rules caution users that a slot is not a property right. S. 2851 makes this perfectly clear. As for "fairness", it is not fair to the American public that the FAA allowed carri-

ers to profit from selling a valuable Federal asset, while competitive airline service is not being promoted.

I look forward to hearing from the witnesses today and to working to pass this legislation expeditiously.

101ST CONGRESS
2D SESSION

S. 2851

To alter the Federal rules applicable to commercial air carriers at high density traffic airports.

IN THE SENATE OF THE UNITED STATES

JULY 12 (legislative day, JULY 10), 1990

Mr. MCCAIN (for himself, Mr. FORD, Mr. DANFORTH, Mr. HOLLINGS, Mr. EXON, Mrs. KASSEBAUM, and Mr. KASTEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To alter the Federal rules applicable to commercial air carriers at high density traffic airports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Airline Competition Equity Act of 1990".

FINDINGS

SEC. 2. The Congress finds that—

(1) the provisions of subpart S of part 93 of title 14, Code of Federal Regulations (known as the "buy-sell rule"), which allow a public right to be used as a

private asset, not only restrict competition at the four airports whose use is controlled through slots but also can impede competition in air transportation throughout the northeastern and midwestern United States;

(2) passengers pay higher fares at slot-controlled airports than at other airports;

(3) publicly granted rights should not be sold for purely private gain;

(4) increasing the number of slots at high density traffic airports will make it easier for carriers not already engaged in regular operations at those airports to achieve regular operations; and

(5) improvements in the air traffic control system since the initiation of slot controls, including new technology and new methods of regulating air traffic, necessitate a complete review of the practice of using slots to control access to high density traffic airports.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Administrator" means the Administrator of the Federal Aviation Administration.

(2) "Air carrier" has the meaning given that term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

(3) "High density traffic airport" means the Kennedy International Airport, New York, New York; La-

Guardia National Airport, New York, New York; O'Hare International Airport, Chicago, Illinois; or Washington National Airport, Washington, DC.

(4) "New entrant carrier" means an air carrier, including a commuter operator, that holds fewer than twelve slots at the relevant airport.

(5) "Secretary" means the Secretary of Transportation.

(6) "Slot" means the operational authority to conduct one landing or takeoff operation, under instrument flight rules, each day during a specific period at a high density traffic airport.

PURCHASE, SALE, LEASE, AND OTHER TRANSFER OF SLOTS

SEC. 4. (a) Notwithstanding the provisions of subpart S of part 93 of title 14, Code of Federal Regulations, no slot at any airport may be purchased, sold, leased, or otherwise transferred on or after July 12, 1990, except that one slot may be exchanged for another slot if there is no other consideration associated with the exchange.

(b) No rule, regulation, or order (other than an emergency order) may be issued by the Secretary or the Administrator relating to restrictions on aircraft operations at any high density traffic airport unless such rule, regulation, or order is consistent with the provisions of this Act.

SLOT ALLOCATIONS FOR NEW ENTRANT CARRIERS

SEC. 5. (a) Not later than sixty days after the date of enactment of this Act, the Administrator shall by rule establish a pool of slots for new entrant carriers at each high density traffic airport.

(b) The rule referred to in subsection (a) shall include, but not be limited to, provisions to accomplish the following:

(1) The new entrant slots in the pool shall be in addition to slots at each such airport which are in existence on the date of enactment of this Act, and the number of such new entrant slots shall not increase the overall number of slots at such airport by more than 5 percent in excess of the number of such existing slots.

(2) New entrant slots shall be allocated in such a way that, to the maximum extent practicable, all new entrant carriers have an equal number of slots overall at such airport, including both new entrant slots and existing slots. No new entrant carrier shall receive a new entrant slot under this section which gives that carrier more than twelve slots overall at such airport.

(3) Each new entrant slot shall be public property and its use shall represent a nonpermanent operating privilege within the exclusive control and jurisdiction of the Secretary and the Administrator. Any such privilege may be withdrawn, recalled, or reallocated by the

Secretary for reasons of aviation safety, airspace efficiency, the enhancement of competition in air transportation, or any other matter in the public interest and in accordance with the public convenience and necessity.

(4) If the holder of a new entrant slot fails to initiate use of the slot within sixty days after receiving the slot or thereafter fails to use the slot in accordance with rules for use of existing slots, the new entrant slot shall be withdrawn and, if appropriate, be reallocated to another new entrant carrier.

(c)(1) Section 6005(c)(5)(C) of the Metropolitan Washington Airports Act of 1986 (49 App. U.S.C. 2454(c)(5)(C)) is amended by inserting ", except as provided in the Airline Competition Equity Act of 1990," immediately after "of this Act".

(2) Section 6009(e)(1) of the Metropolitan Washington Airports Act of 1986 (49 App. U.S.C. 2458(e)(1)) is amended by inserting ", except as provided in the Airline Equity Competition Act of 1990," immediately after "this title".

HIGH DENSITY TRAFFIC AIRPORT RULES

SEC. 6. (a) The provisions of subpart K of part 93, of title 14, Code of Federal Regulations, and of the rule referred to in section 5(a) of this Act shall cease to have force and effect on and after the date that is eighteen months following the date of enactment of this Act.

(b) If after such provisions cease to be effective the Secretary or the Administrator decides to issue a new rule, regulation, or order providing for the allocation of slots at any airport, such rule, regulation, or order shall not be issued until the Administrator certifies in a report to Congress that—

(1) such a rule, regulation, or order is required in the interest of aviation safety; and

(2) there is no alternative means for achieving comparable safety which has a less adverse effect upon competition in air transportation at such airport.

(c) Any such rule, regulation, or order issued in accordance with subsection (b) shall be airport-specific unless the Administrator certifies that the aviation safety sought cannot be achieved without making the rule, regulation, or order applicable to more than one airport.

○

Senator FORD. We will now hear the witnesses. The first witness is the Honorable Jeffrey Shane, Assistant Secretary for Policy and International Affairs, Department of Transportation.

Welcome, Mr. Shane. You might recognize your colleague for the record. We would welcome putting your statement in the record and let you hit the highlights of whatever you would prefer. We would like to get into some questions as soon as possible.

STATEMENT OF JEFFREY N. SHANE, ASSISTANT SECRETARY OF TRANSPORTATION FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. SHANE. Thank you, Mr. Chairman, and good morning to members of the subcommittee. I would like to introduce Mr. Stan Matthews, who is sitting to my left. He is the Deputy Director of the FAA's Office of Air Traffic System Management.

We are delighted, of course, that you have given the Department of Transportation this opportunity to offer the Committee our perspectives on S. 2851, the Airline Competition Equity Act of 1990. I do have a larger statement, Mr. Chairman, that I would ask permission to have inserted in the record. And, again with your permission, what I would like to do is just summarize that statement so that we can get into questions.

Senator FORD. That is certainly agreeable with the Committee. And your testimony will be entered into the record.

Mr. SHANE. The Department recognizes the concerns underlying this bill, despite the fact that we oppose its enactment for a variety of practical reasons. Under different air traffic demand conditions, we would like nothing better than to get rid of the high density rule.

Since 1969, the high density rule has served to limit the number of airline, commuter and general aviation flights which can be operated into four of the Nation's busiest airports, Kennedy International and LaGuardia in New York, Chicago's O'Hare International, and Washington National Airport. The justification for the rule today is largely the same as it was in 1969: the capacity of these airports will not support additional operations without an unacceptable level of delays, and thus, an adverse impact on the flying public.

At Washington National Airport, the total number of permitted operations remains the same as when the rule was promulgated, but the number of air carrier operations was reduced from 40 per hour to 37 per hour, as part of the comprehensive Metropolitan Washington Airports Policy issued in 1981. That policy substantially ended a longstanding acrimonious debate over federal policy regarding the operation of National Airport, and abrogation of one part of the agreed policy may resurface other related issues.

That agreement became the basis for the transfer of National and Dulles Airports to operation by local authorities, was incorporated in the Metropolitan Washington Airports Act of 1986, and it remains in effect today.

The bill would increase the number of operations at each of the four airports by up to 5 percent within several months, and could require the removal of all operational limits within 18 months. It is

the FAA's opinion that an increase of that magnitude would immediately and noticeably worsen air traffic delays at LaGuardia, O'Hare and Kennedy Airports.

Those three airports are currently the first, the second, and the fourth worst airports, respectively, for operating delays among all major U.S. airports. Thirty percent of the air traffic delays at all U.S. airports occur at those three airports, and yet those three airports account for only 4 percent of total system operations.

O'Hare alone accounts for over 16 percent of all air traffic delays nationally. While National Airport is not currently subject to delays as severe as the other three high density airports, we believe that any substantial increase in jet operations could quickly increase the number of operating delays to an unacceptable level.

Each of these airports, moreover, is a key facility in the National Airspace System. Operational conditions at each have an effect on virtually every other major airport in the Nation, and the inconvenience to travellers extends far beyond the high density airport where the delay originated.

As recently as 1988, the National Transportation Safety Board was recommending that the allowable number of slots under the high density rule at Chicago be reduced due to the congestion which the NTSB viewed as the major cause of the operational problems being experienced at Chicago.

Hard work by the FAA has resulted in a dramatic improvement of the situation at Chicago, and delays at O'Hare have decreased by 15 percent for the first six months of this year. But we do not want to lose the ground we have gained by eliminating the rule or by increasing the number of slots without believing that we are equipped to handle the resulting increases in traffic.

There is a limit to what refinements to ATC procedures and an increase in resources can accomplish in these highly complex operating environments. Significantly higher levels of demand will simply overload the system.

Air traffic control maintains safety in such circumstances through traffic flow management programs. Under a traffic management program, aircraft are held on the ground until they can be accommodated at the departure airport, in the en route airway system, and at the arriving airport without compromise of the FAA's separation standards.

What this means is that flights will be delayed. Even a 5 percent increase in operations at Kennedy, LaGuardia, or O'Hare, for example, will exacerbate the already high levels of delays, and will generate additional delays and flight cancellations at other major airports by the ripple effect of the original delays cascading through the system.

Our simulations indicate that even under ideal weather conditions, a 5 percent increase in operations at these airports would generate increases in delays of 13 to 18 percent. Poor weather would raise the delay increase to 37 percent.

Traffic flow management is not a substitute for the high density rule. Traffic management programs help controllers maintain safe separation of traffic, but they do not limit total demand or reduce delay. The inevitable overscheduling that would result from this bill would be felt immediately by those on existing scheduled

flights. Because these flights would no longer be guaranteed an arrival or departure position, the pattern of delays could become highly unpredictable, as well as longer in duration.

For all of those reasons, the FAA considers it extremely important that ATC be permitted the flexibility to limit operations at selected airports for the efficient and orderly movement of traffic in the National Airspace System.

It is also important to recognize that the removal or easing of the high density rule would increase airport noise in three highly noise sensitive communities. The high density rule effectively places an upper limit on aircraft noise at the affected airports by limiting the total number of aircraft operations.

Before closing, let me just turn to the buying and selling of slots, Mr. Chairman.

Under current regulations commonly referred to as the buy-sell rule, slots may be sold or traded for any consideration and for limited or open-ended periods of time. Prior to the implementation of the buy-sell rule, slots at the high density rule airports were allocated among the carriers by scheduling committees consisting of representatives of carriers serving or desiring to serve each of the high density airports. That process had largely broken down under the pressure of increasing demand by the airlines for the limited number of slots, and new entrants were unable to obtain slots.

A major objective of the buy-sell rule is to allow the use of the slots to be adjusted in response to market demand, and therefore be put to their most productive use with minimal interference by the government. Since the rule took effect, transactions have occurred routinely. We have experienced essentially no problems with this aspect of the buy-sell rule, and believe that it is in fact accomplishing what we expected in that respect.

With respect to another of its objectives, we recognize that the buy-sell rule does not appear to have worked as well. There is evidence that the rule has not been as effective in allowing new entrants and small incumbents access to slots through purchase. Some changes in the slot rule were implemented in a final rule which became effective on August 22, 1989, but the rule did not substantially affect the availability of slots to new entrants. Issues not addressed in the August final rule remain, of course, under consideration by the Department.

With respect to the provision of S. 2851, which would eliminate the selling and trading of slots other than on a one-for-one basis, it seems to us that this does nothing to improve the situation, and in fact eliminates one important benefit of the current rule. The flexibility which the current rule affords with respect to sales and trades allows the system to make the best use of the limited resource embodied in the slots. Under the bill the distribution of slots would be locked in place among the incumbent carriers.

In summary, the present rule provides fluidity to the distribution of slots and thus increases the efficiency of the system. Disallowing the selling and the uneven trading of slots will only reintroduce a rigidity to the system that will reduce its efficiency, while not causing carriers to give up slots for reallocation. Thus, we do not believe that eliminating the authority to sell slots will result in fact in any increase in the availability of slots.

That completes my prepared statement, Mr. Chairman, and of course I am pleased to answer any questions that members may have.

[The statement and question and answer follows:]

TESTIMONY OF JEFFREY N. SHANE

ASSISTANT SECRETARY OF TRANSPORTATION

FOR POLICY AND INTERNATIONAL AFFAIRS

Mr. Chairman and Members of the Subcommittee:

Thank you for affording me this opportunity to offer to the Committee our perspectives on S. 2851, the Airline Competition Equity Act of 1990. The bill requires three major changes to the way in which the Department administers operations at the high density airports. First, it prohibits any transfers of slots, except for exchanges of one slot for another with no other consideration in the exchange. Second, the bill requires the creation of additional slots for new entrants at each of the four high density airports of up to five percent of the number of slots now available at each airport. Third, it requires the repeal of the high density rule in eighteen months. The issuance of any succeeding rule is conditioned on a certification by the Federal Aviation Administrator in a report to Congress that the rule is required in the interest of aviation safety and that there is no alternative way to achieve such safety with a less adverse effect on competition at that airport.

The Department recognizes the concerns underlying this bill, despite the fact that we oppose its enactment for a variety of practical reasons. Under different air traffic demand conditions we would like nothing better than to get rid of the high density rule, which would, of course, make the buy/sell rule and the requirement to create slots for new entrants unnecessary.

Since the fundamental subject of this legislation is the high density rule, I would first like to describe its history, reasons for its creation and what we believe would be the result of its relaxation or removal. I will then turn to a discussion of the selling and trading of slots.

The high density rule is found at Subpart K of Part 93 of the Federal Aviation Regulations. The rule was adopted in 1969 under the FAA's authority, in Section 307 of the Federal Aviation Act of 1958, to regulate air traffic for efficiency as well as safety. Since 1969, the High Density Rule has served to limit the number of airline, commuter, and general aviation flights which can be operated into four of the nation's busiest airports: Kennedy International and LaGuardia in New York; Chicago's O'Hare International; and Washington National. The justification for the rule today is largely the same as in 1969: the capacity of these airports, measured primarily by calculation of the engineered performance standards, will not support additional operations without an unacceptable level of delays and an adverse impact on

the flying public. The high density rule provides a systematic way of constraining air traffic demand to the capacity of the subject airports by limiting the number of "slots" (which are the number of IFR takeoffs and landings that can occur during certain time periods) and their distribution by hourly or half-hourly period to the available capacity for each airport. The FAA continually monitors the performance of the ATC system and the number of operating delays at major airports. As a result, the number of operations permitted under the rule today is greater at three of the airports than the number permitted under the original rule, in recognition of expanded airport facilities and improvements in air traffic procedures and technology.

At Washington National Airport, the total number of permitted operations remains the same as when the rule was promulgated, but the number of air carrier operations was reduced from 40 per hour to 37 per hour, as part of the comprehensive Metropolitan Washington Airports Policy issued in 1981. That policy substantially ended a longstanding, acrimonious debate over Federal policy regarding the operation of National Airport, and abrogation of one part of the agreed policy may resurface other related issues. That agreement became the basis for the transfer of National and Dulles Airports to operation by local authorities, was incorporated in the Metropolitan Washington Airports Act of 1986 and remains in effect today. Opposition to the increase in air carrier operations contemplated by this bill can be expected from the airport operator, as well as from the local governments in the region.

The bill, in addition to repealing the buy-sell regulations, would increase the number of operations at each of the four airports by up to five percent within several months, and could require the removal of all operational limits within 18 months. It is the FAA's opinion that this increase would immediately and noticeably worsen air traffic delays at LaGuardia, O'Hare and Kennedy Airports. These three airports are currently the first, second, and fourth worst airports, respectively, for operating delays among all major U.S. airports. Thirty percent of the air traffic delays at all U.S. airports occurs at those three airports; yet they account for only four percent of total system operations. O'Hare alone accounts for over sixteen percent of all air traffic delays nationally. While National Airport is not currently subject to delays as severe as the other three high density airports, that airport has only one major runway, and any substantial increase in jet operations could quickly increase the number of operating delays to an unacceptable level.

Each of these airports is a key facility in the National Airspace System. Operational conditions at each have an effect on virtually every other major airport in the nation. For example, if departures are delayed at O'Hare, those flights will arrive late at destination airports, delaying connecting flights and continuing flights out of those airports. Similarly, if LaGuardia cannot accept more arrivals than are currently inbound, air

traffic control (ATC) will have to hold departures on the ground at the airport of origin. In either case, the inconvenience to travelers extends far beyond the high density airport where the delay originated.

The FAA has taken comprehensive measures in both the New York and Chicago areas to enhance the efficiency of air traffic services and ensure that the system is safe. Under the Expanded East Coast Plan, the FAA revised the air route structure and arrival and departure procedures in the Northeast to increase the efficient use of airspace. The FAA Office of Aviation Safety has conducted System Safety and Efficiency Reviews of both O'Hare Airport and the Northeast Corridor. These reviews resulted in more than a hundred recommendations for improved procedures, accelerated acquisition of new equipment, and additional resources. The FAA has completed many of the recommended actions at this time.

As recently as 1988, the National Transportation Safety Board was recommending that the allowable number of slots under the high density rule at Chicago be reduced due to the congestion which the NTSB viewed as the major cause of the operational problems being experienced at Chicago. While we did not agree that a reduction of slots was necessary, the FAA has worked very hard to improve conditions in the Chicago area. Chicago has had a priority for the installation of new equipment, has been one of the locations participating in the controller "pay experiment," and has undergone some reorganization of controller positions to better

organize the traffic workload. All of these efforts have resulted in a dramatic improvement of the situation at Chicago and delays at O'Hare have decreased by fifteen percent for the first six months of this year. We do not want to lose the ground we have gained by eliminating the rule or by increasing the number of slots without believing that we are equipped to handle the resulting increases in traffic.

There is a limit to what refinements to ATC procedures and an increase in resources can accomplish in these highly complex operating environments. The amount of airspace in these areas cannot be increased. As a practical matter, operational capacity in the near to mid term is also limited to current levels by the unexpandable physical capacity of the airport, particularly at LaGuardia and National. As a result, significantly higher levels of demand will simply overload the system.

Air traffic control maintains safety in such circumstances through traffic flow management programs. Under a traffic management program, aircraft are held on the ground until they can be accommodated at the departure airport, in the enroute airway system, and at the arriving airport without compromise of the FAA's separation standards. Standard separation between aircraft must be maintained at all times, regardless of demand, and sometimes must be increased for safety or local operating conditions.

What this means is that flights will be delayed. Even a 5 percent increase in operations at Kennedy, LaGuardia or O'Hare, for example, will exacerbate the already high level of delays, and generate additional delays and flight cancellations at other major airports by the "ripple effect" of the original delays cascading through the system. Our simulations indicate that even under ideal weather conditions a five percent increase in operations at these airports would generate increases in delays of thirteen to eighteen percent. Poor weather would raise the delay increase to thirty-seven percent.

Endemic operating delays are serious: not only are they inconvenient and costly to travelers; they make reliable airline scheduling difficult; and they place added strain on ATC resources. Because of the increased delays and added traffic, we could expect to see prolonged periods of intense work activity for FAA controllers. Additionally, extra demand at those airports will eventually contribute to unanticipated airborne holding which the FAA has sought to avoid since 1981 due largely to its impact on ATC workload.

The High Density Rule addresses excessive delay by limiting <u>demand</u> on the system, that is, the number of flights that can be scheduled in a given time period. Traffic flow management is not a substitute for the High Density Rule; traffic management programs help controllers maintain safe separation of traffic, but they do not limit total demand or reduce delay. Nor can the

airlines be expected to resolve these problems on their own; airlines may, for example, institute unrealistic scheduling practices in response to other competitive pressures. An actual example is the scheduling of more than 70 departures in the same minute, even though those flights could not possibly operate as scheduled. The inevitable overscheduling that would result from this bill would be felt immediately by those on existing, scheduled flights. Because these flights would no longer be guaranteed an arrival or departure position, the pattern of delays could become highly unpredictable, as well as longer in duration. It is akin to removing the limits on access to parking in a busy building. Those who work there will have no way of predicting when they head to work when a space might become available.

For all of the above reasons, the FAA considers it extremely important that ATC be permitted the flexibility to limit operations at selected airports, for the efficient and orderly movement of traffic in the National Airspace System.

It is also important to recognize that the removal or easing of the high density rule would increase airport noise in three highly noise sensitive communities. The high density rule effectively places an upper limit on aircraft noise at the affected airports by limiting the total number of aircraft operations. At Washington National the number of air carrier operations in the high density rule was influenced by noise considerations. The noise-sensitive communities surrounding National Airport can be

expected to voice strong opposition to any increase in the number of air carrier flights. In Chicago, aircraft noise and the number of operations at O'Hare are highly sensitive noise issues. In New York and New Jersey many communities have raised the issue of airport noise at LaGuardia and Kennedy Airports. An increase in operations at those airports and the extension of peak level operations late into the evening would clearly have added noise impacts.

From the Federal perspective, the Federal Aviation Administration would need to comply with the National Environmental Policy Act (NEPA) with respect to the environmental impacts of altering the high density rule. The need to assess both noise and air quality impacts (through effects on ground access traffic) can be anticipated from increasing the number of flights. A five percent increase in air carrier operations could have a significant environmental impact.

Buying and Selling of Slots

Under current regulations -- commonly referred to as the buy/sell rule -- slots may be sold or traded for any consideration and for limited or open ended periods of time. Prior to the implementation of the buy/sell rule, slots at the high density rule airports were allocated among the carriers by scheduling committees consisting of representatives of carriers serving or desiring to serve each of the high density airports. That process

had largely broken down under the pressure of increasing demand by the airlines for the limited number of slots, and new entrants were unable to obtain slots. Also, the 1981 air traffic controller strike necessitated a temporary cutback in operations that was carried out by FAA rule.

Following an extensive rulemaking process lasting some 18 months, the Department issued a rule allowing slots to be bought and sold in order to provide the carriers with the means to make the adjustments to markets and schedules that are essential to the effective functioning of the commercial airline industry. Five percent of existing slots were made available to new entrants upon implementation of the buy/sell rule; all remaining slots were allocated to the incumbent holders of the slots at the time of implementation. Since April 1, 1986, the holders of the slots at these airports have been able to buy, sell and trade them at their discretion.

A major objective of the "buy/sell rule" is to allow the use of the slots to be adjusted in response to market demand and, therefore, be put to their most productive use with minimal interference by the government. Since the rule took effect, transactions have occurred routinely. We have experienced essentially no problems with this aspect of the buy/sell rule and believe that it is accomplishing what we expected in this respect -- that is, providing a mechanism by which slots could change hands in response to market forces in a quick and efficient

manner. The fact that permanent slot sales occur relatively infrequently is due, we believe, not to an ineffective market, but rather to the fact that the slots are by and large already being employed in their highest and best use.

With respect to another of its objectives, we recognize that the buy/sell rule does not appear to have worked as well. There is evidence that the rule has not been as effective in allowing new entrants and small incumbents access to slots through purchase. It is in this context that America West filed a petition with the FAA on July 1, 1987, asking that a rulemaking proceeding concerning the allocation of slots at National and LaGuardia Airports be initiated and recommending the withdrawal of slots from the current holders and their reallocation to new entrants.

The Department's FY 1989 Appropriations Act required the FAA Administrator to "institute a rulemaking proceeding to consider the need for changes to the existing regulation concerning the transfer of slots held by air carriers and commuter operators at each of the four airports covered by [the buy/sell rule]" by the end December 31, 1988.

The responses to the America West petition and to the rulemaking required by Congress were consolidated in a Notice of Proposed Rulemaking (NPRM) issued on December 22, 1988. In addition to requesting responses from interested parties on the issues concerning the buy/sell rule which were raised in the

Appropriations Act, the NPRM proposed to tighten the requirements for the operation of existing slots in order to make it more difficult to protect unused slots from the "use-or-lose" provisions of the rule. Some changes in the slot rule were implemented in a final rule which became effective on August 22, 1989, but the rule did not substantially affect the availability of slots to new entrants. Issues not addressed in the August final rule remain under consideration by the Department.

With respect to the provision of S. 2851 which would eliminate the selling and trading of slots, other than on a one for one basis, it seems to us that this does nothing to improve the situation and, in fact, eliminates one important benefit of the current rule. The flexibility which the current rule affords with respect to sales and trades allows the system to make the best use of the limited resource embodied in the slots. Under the bill the distribution of slots would be locked in place among the incumbent carriers.

This is true even when many of the transactions are for limited periods of time. A carrier which does not have an immediate use for a slot can, in effect, lease the slot to a carrier which can make good use of it, rather than being forced to operate it in a marginal operation to avoid its loss under the use-or-lose rules. Our observations suggest that the carriers will, in fact, operate more than the optimal number of flights temporarily in order to prevent permanent loss of the slot when the present flexibility is denied them.

In summary, the present rule provides fluidity to the distribution of slots and thus increases the efficiency of the system. Disallowing the selling and uneven trading of slots will only reintroduce a rigidity to the system that will reduce its efficiency while not causing carriers to give up slots for reallocation. Thus, we do not believe that eliminating the authority to sell slots will result in any increase in the availability of slots. In addition, we believe it will have the unfortunate result of reducing the effectiveness with which the existing slots can be used and, as a result, the overall efficiency of the commercial aviation system.

This completes my prepared statement, and I would be pleased to answer your questions.

QUESTION OF SENATOR FORD AND THE ANSWER THERETO

Question: Your testimony also indicates that S. 2851 would require compliance with the National Environmental Policy Act (NEPA). In issuing an interim final rule in 1984 that slightly altered the number of operations at Kennedy, O'Hare and LaGuardia, the agency noise analysis indicated that even assuming a worst case scenario upon removal of the High Density Rule at O'Hare of an increase of 100 operations per day, the impacted area would only be increased by 0.07%. You found that to be not significant. You also recalculated the number in response to a comment to the rulemaking and still made the same ultimate conclusion. Are you now suggesting that an increase by 5% (2.4 operations at LaGuardia, 3.6 operations at Kennedy and approximately 6 operations at O'Hare per hour) would constitute a significant noise impact? What percentage of operations are now stage 3 aircraft, compared to 1984?

Answer. I indicated in my prepared statement that any proposal by the Department to increase operations at slot-controlled airports would be subject to analysis under NEPA. The first issue would be whether the increase would have "a significant effect on the quality of the human environment," within the meaning of the statute. I did not intend, in my testimony, to prejudge the outcome of that inquiry.

The percentages of Stage 3 operations at Kennedy, LaGuardia, and O'Hare in 1984 vs. 1990 are set forth in the chart below:

STAGE 3 AIRCRAFT AS PERCENT OF TOTAL AIRLINE OPERATIONS AT KENNEDY, LaGUARDIA, AND O'HARE, 1984 AND 1990

	1984	1990
Kennedy	4.0	69.0
LaGuardia	20.4	29.0
O'Hare	23.4	38.4
Nationwide fleet	23.7	43.0

Senator FORD. Thank you very much, Secretary Shane.

I have three or four questions, and I am sure my other colleagues have some questions also.

Your statement indicates to me that you believe that buy-sell rule is basically working. But last fall, I believe it was September, the GAO testified that not a single carrier has been able to establish new service at slot-controlled airports by purchasing a slot. Does that suggest the rule is working?

Mr. SHANE. Well, I did not suggest that the rule was completely working.

Senator FORD. I said basically working just fine.

Mr. SHANE. It does not work as well as we would like, Mr. Chairman, for purposes of bringing new entrants into high density rule airports. That is its deficiency, very clearly. We have struggled with that. Changes that we have made in the rule have not addresses that question sufficiently. And the inability of new entrants to come into high density rule airports remains a very real issue. I am not trying to cover that over.

I said that the rule is working in terms of its ability to facilitate transactions. But, by and large, those transactions move the slots around among incumbent carriers; they do not seem to make slots available very effectively to new entrants.

Senator FORD. Well, the fiscal year 1989 Appropriations Act, at the request of Senator Kasten, required DOT to consider the need for changes to the buy-sell rule, and directed DOT to promulgate final regulations not later than 270 days after the date of enactment, which was September 1988. You say these issues are under consideration. How much longer would the Department consider these issues? And why should we not address the problem through legislation, since it appears that the Department is not?

Mr. SHANE. Mr. Chairman, we did in fact initiate a rule-making in keeping with that legislation prior to the end of 1988, as we were required to do so by law. And we issued some elements of a final rule prior to the statutory deadline, in August of 1989. Clearly, we did not address all elements of the problem. And the reason we have not addressed all elements of the problem is because, quite honestly, we just have not figured out better answers than the ones that are currently in place.

Senator Kasten and I have had a colloquy about that legislation and about the Department's response to it. The fact is that this is and continues to be a very difficult problem. I do not quarrel with the Committee's desire to legislate in this area, because we understand that there is a tremendous concern about the high density rule airports, and particularly about competition at the high density rule airports.

If the Department had been able to come up with a system that it felt would work better than the current rules, I promise you we would have promulgated that better solution. It was indeed open to the Department to simply, on the basis of the notice of proposed rulemaking, terminate at the end of the process any further rulemaking, and that would have put us in technical compliance, I guess, with the legislation.

We did not think that was a good faith way to deal with the problem, because we felt that indeed there are problems out there that need further consideration. We would like to keep that consid-

eration going. I wish I could promise you a time by which we would have that solution before you, but I do not think it would be realistic for me to do that.

Senator FORD. I understand that FAA "flow control" fits demand to the capacity at each airport. The flow can be adjusted hourly, or as conditions change. Why is this not a better way of managing capacity than slots, which are fixed and, in my opinion, artificial?

Mr. SHANE. I think it is the relationship between flow control and scheduling. There is no doubt that the FAA air traffic control system will maintain the needed separation and ensure the safety of flight. That is not an issue here.

What happens, however, once you take the high density rule away, once you take the upper limit on the number of slots available to air carriers away, is that all players get to play. Anybody who wants to file a flight plan can file it, and flights can be scheduled by anyone and everyone. The fact is that not everybody can fly when they would like to fly because of air traffic control flow management procedures, and the net result of that is that schedules become absolutely unreliable. It is that impact on the traveling public that we are concerned about.

It would be impossible, Mr. Chairman, for any passenger to make any reasonable prediction about when he or she would arrive at a destination airport without the high density rule in place, and it is really that concern that we have, more than the regulation for safety purposes of any traffic that might come into these airports as a result of the abolition of the high density rule.

Senator FORD. You say of the four high density airports that three of them are one, two and four in delays?

Mr. SHANE. Correct—already, with the high density rule in place.

Senator FORD. Well, tell me how other busy airports manage without slots. Atlanta—Hartsfield—Newark, Dallas, Fort Worth, Denver—how do they get along without slots?

Mr. SHANE. Those airports are more favorably situated in a couple of different ways. First of all, they do have greater physical wherewithal to accommodate more demand and expand capacity.

Senator FORD. What is physical? You mean, they are bigger than O'Hare?

Mr. SHANE. Well, they certainly have room for expansion that O'Hare does not have.

Senator FORD. But with whatever is present now, what they are flying in there now. Expansion does not make any difference. That is in the future. It is what is available to them now, and these airports that I have just mentioned do not have slots and apparently are not in your top three as it relates to delays. They say you cannot go to heaven without going through Atlanta.

Mr. SHANE. It is a function, I think, of a number of factors. First of all, the very configuration of airport runways can have an effect on the ability to handle increased traffic. Weather has an enormous amount to say about the reliability of services to and from a particular airport, and the airports that you have mentioned are all favored with weather that is much more congenial to air traffic operations than the high density rule airports are. If it got to the point where they began to bump up against——

Senator FORD. Newark and Denver are in the category of where the weather is better there than it is at the others?

Mr. SHANE. Well, the weather certainly has not created the kinds of delays at Denver that we have seen in New York and Chicago.

Senator FORD. I thought New York and Newark are pretty close together. Now, I am not familiar with that part of the world. I am more southern-based. What about Denver? Does Denver not have a lot of problems, weatherwise, with wind shears and all those things?

Mr. SHANE. All I can speak to is experience. The fact is that Denver, despite the high demand for services to and from Denver, has not yet bumped up against the practical limits that we bumped up against at the airports now covered under the high density rule.

Senator FORD. Do you believe that any increase in operation could be sustained at any of these high density airports?

Mr. SHANE. I think that there can be an increase in operations, to be sure. The question is whether or not you can maintain a reliable aviation system if you do increase those operations. I think the physical capacity is there, and physical capacity combined with the flow control management would probably mean that you would actually have more flights and they would operate safely. The only problem is, none of us would have any idea when they would operate, and that has already been the problem at so many of these airports today, even, as I say, with the high density rule in effect.

The big complaint of consumers out there has been what they have perceived as a diminution in reliability of service and what we are trying to do is figure out how to accommodate increasing demand without losing that essential reliability without which the aviation system will lose its value to the traveling public.

Senator FORD. Let us talk about National Airport just a minute, and this will be my final question, and I will get to my other colleagues.

Is it not true that the 37-an-hour slot limit at Washington National, does not accurately reflect the number of operations?

Mr. SHANE. Well, there are more operations—37 air carrier operations are what are permitted at National. You have got commuter and general aviation slots as well in the total package.

Senator FORD. The shuttle is not included?

Mr. SHANE. I would have to ask Mr. Matthews.

Senator FORD. The shuttle is not included, or is included?

Mr. MATTHEWS. Yes, the shuttle is included, because it is a turbojet operation.

Senator FORD. Is it included in the 37 per hour?

Mr. MATTHEWS. Yes. Extra sections would not be included.

Senator FORD. What are extra sections? Is that where you fill up one plane and put another one on?

Mr. MATTHEWS. Yes, sir.

Senator FORD. All the shuttles are included in the 37 per hour?

Mr. MATTHEWS. Yes, sir.

Senator FORD. Then what is the 37 per hour? Is that the limit per hour at National? Is that take-offs and landings, 37 each?

Mr. MATTHEWS. That is the basic limit, but when there is good weather aircraft can land at National. We make increased demand

available, and they can come in and land, but during poor weather conditions we cannot increase their accessibility.

Senator FORD. What is the average out there then? Do we have more days of good weather than bad weather? What is the average at National?

Mr. MATTHEWS. Are you asking about the weather average?

Senator FORD. Well, you say the weather is not bad every day, and you say if the weather is good you can increase above the 37, is that correct?

Mr. MATTHEWS. That is correct.

Senator FORD. Then what is the average?

Mr. MATTHEWS. I do not have the average, but we will increase it up to 12 slots per hour during those good weather days.

Senator FORD. So that makes 49, roughly?

Mr. MATTHEWS. That is primarily general aviation and smaller aircraft. Because of the limitations of runways at National, the jets primarily only use the one long runway, so that 37 is primarily a limitation on that runway.

Senator FORD. Fine. Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman. Thank you for being here, Mr. Shane.

Let me see what we agree on here. Do you agree with GAO that there has been no new entrants at the slot-controlled airports, nor is there any prospect for any new entrant?

Mr. SHANE. I cannot say categorically that there has been no new entry. In fact, there has been some, I guess, pursuant to special efforts on the part of many of us. The prospects for new entry are not good. We can certainly agree to that.

Senator MCCAIN. Do you agree with the GAO that the buy-sell rule has failed, and that sales between unrelated carriers have fallen from 110 per quarter in 1986 to 28 per quarter in 1987 to 12 per quarter in 1988?

Mr. SHANE. I think some settling out through the buy-sell process was expected, so you would expect a rash of sales in the beginning and then a diminishing number of sales over time.

Senator MCCAIN. How many have we had in 1989?

Mr. SHANE. I am not sure there have been any in 1989.

Senator MCCAIN. I do not think there have been any in 1989.

Mr. SHANE. But again, that is primarily a concern to the new entrants, which is the problem we have acknowledged. What it means for incumbents is that they are relatively content.

Senator MCCAIN. We can agree, can we not, that there has been a dramatic decrease in the sales under the buy-sell rule?

Mr. SHANE. Yes.

Senator MCCAIN. Your statement says, "Our observation suggests that carriers in fact operate more than the optimal number of flights temporarily in order to prevent permanent loss of the slot when the present flexibility is denied them."

Mr. SHANE. That was a reference to the use or lose provision, that is right. The point being that, for fear of losing a slot, a carrier will operate a less than optimal operation just to hang on to it.

Senator MCCAIN. We do see more and more incidences of short-term leases, 60 and 90 days, as opposed to resorting to actual sale of the slot, is that accurate?

Mr. SHANE. Yes.

Senator MCCAIN. Then you state in response to what I believe was Senator Kasten's amendment that you responded in compliance with the law, but you also state in your statement that there has been very little effect of that rule-making. Tell me what you did address in the rule-making in response to the legislation that was contained in the 1989 appropriations bill?

Mr. SHANE. In terms of the concerns of the Committee, I would have to say that the responses in the rule-making that we did in 1989, which was a partial response to the legislative requirement, were relatively marginal. I am not trying to hide that. We have not been able to solve the slot problem that this Committee has focused on, and focused on rightfully.

Senator MCCAIN. So you admit—and I appreciate your candor—that you have been unable to solve the slot problem, yet you categorically reject legislation which, by the way, I remind my colleagues was passed, I believe, in 1986 by Senator Kassebaum. So is the status quo satisfactory?

Mr. SHANE. No, it is not.

Senator McCain, it is not fair to say we categorically reject legislation. We find problems with *this* legislation. We would like to find a better solution than we have been able to find within our own councils, and indeed, if this legislation did not create more problems than it solved, I think we would find ourselves supporting this legislation. It is a genuine concern about the reliability of the system that is behind our objection to the provisions of this bill, but that is not to suggest that we would oppose all legislation that addressed the problem.

Senator MCCAIN. Would you agree that leasing of slots by one airline to another in effect gives one the ability to choose its competitor?

Mr. SHANE. Well, it may work to that effect in some circumstances. The buy-sell rule, admittedly an imperfect mechanism, was an effort by the Department of Transportation to try to introduce some market mechanism into the allocation of this very scarce resource, the take-off or landing slot at a high density rule airport.

It was, intended to provide more access to new entrants than it appears to have provided. Indeed, some 5 percent of the slots in the initial allocation were reserved for new entrants or small incumbents. It was in fact in that rash of transactions that we have already referred to that we saw an exchange of slots, all of which transactions appear to have left the new entrants in not a very much better position than they were in before, and that was disappointing to us. There is not any question about that.

Senator MCCAIN. The cost of a slot is now over $1 million in any of these four airports?

Mr. SHANE. That is what I am told. I will say, though, that if you ask economists about the cost of a slot even to an incumbent that received the slot through grandfather rights, they will tell you that the opportunity costs to an incumbent are in fact equal to the cash value of the slot to the new entrant.

So it is not entirely fair, at least from the standpoint of economics, to say that there is no cost to the incumbent. There was no cash outlay at the outset, but in looking at it from the standpoint

of economic policy, you have to recognize that if you have $1 million asset, you have an opportunity to sell it and get $1 million cash. They have decided not to do that, so there is a sunk cost in those slots.

Senator MCCAIN. I will not even touch that one. That logic escapes me. I think the reality is that they have acquired these slots for free. They are now worth well over $1 million each. In some cases, I have heard that they have jacked up the prices more than that. The rich airlines get richer, and the poor airlines are unable to compete for these slots.

I understand the concerns of the airlines. It was not their doing that caused them to receive these slots for free, but very frankly, if some of them had not been quite so greedy and engaged in some of the anticompetitive practices that we see, we probably would not be considering this legislation.

So we will hear further from witnesses, "well, we got these for free but we did not know that Congress was going to try to change the rules on us." Congress would not be trying to change the rules if it was not for the fact that we are seeing fewer and fewer airlines, we are seeing less and less of the competition which was promised to the American people when we deregulated the industry. All of the predictions that were made about a veritable proliferation of airlines when we deregulated the industry has unfortunately been totally false, and we are going in the opposite direction.

I do not like to branch out this hearing and take too much time, Mr. Chairman, but the facts are, would you agree, that Eastern Airlines, according to media reports, is in serious trouble, right?

Mr. SHANE. Correct.

Senator MCCAIN. Continental Airlines is; Pan Am is; and of course the Trump shuttle, perhaps not for reason of their airline operation, is in danger. We are rapidly approaching the point where there are about four major airlines in America, which frankly would not concern me if it were not for the effect on the airline passenger, who is going to pay much higher fares.

The GAO, who is, frankly, the people that we trust to come up with credible and objective evidence, stated in testimony that the single most important anticompetitive aspect to the airlines today is the slots. And in all due respect to the complexity of the problem, Mr. Shane, so far since 1988 we have received no real addressing of the problem on the part of the Department of Transportation. I would be glad to hear your response to that tirade.

Mr. SHANE. I hear the concern and I appreciate it. We are talking about the high density rule airports, we are talking about four airports that account for 4 percent of the system. There are competitive problems at the high density rule airports, and to some extent those competitive problems are a function of the working of the high density rule, and I am not denying that.

As you know, Senator McCain, we have studied the deregulated U.S. airline industry, and we have found that while there are, as you say, pockets of problems throughout the industry, the fact is, according to our study, competition has increased for the vast majority of passengers.

There is a concern about the diminishing number of players. Whether or not adjustments in the high density rule will have a very material impact on trends in the industry that we are concerned about, it seems to me is a very open question. What we are concerned about is not throwing out the baby with the bath water. If you create, in the interest of new entry, a far less reliable system, particularly in airports that are as important to the entire National Airspace System as these airports are, I think you may be making a bad policy. And that is the concern that I bring to you today.

Senator McCain. Thank you very much, Mr. Chairman.

Thank you, Mr. Secretary.

Senator Ford. Senator Robb.

Senator Robb. Thank you, Mr. Chairman.

Mr. Chairman, I might begin by saying I just have information that might respond to one of your questions about the total number of flights. The information I have, in addition to the 37 per hour and 555 per day under the scheduled commercial carriers, that there are approximately 900 total flights per day, which would include commuters, general aviation, helicopters, and what have you.

Senator Ford. So the commercial airlines are just operating outside the 37 slots also, in addition to the additional shuttle slots?

Senator Robb. Yes. What I was just trying to do is give you a comparative figure in response to that earlier question.

Senator Ford. I understand. And the answer I did not get is that I know that there are commercial airlines operating outside the 37 slots.

Senator Robb. I might also observe, Mr. Chairman, because I have a question that relates to the control tower, there are an additional 1,100 flights that come within their control, not only Andrews and other aviation in the area, but it is part of the overall equation.

I do have a largely parochial concern, but there are a number of unique aspects to National that do not necessarily affect the others, such as the very limited runway capacity. Really, only one principal runway that functions is a constraint. So to a certain extent, I am not suggesting it is an absolute extent, we are playing in more of a zero-sum game at the Washington National Airport than we are in the other airports, where there is some additional capacity, although certainly the LaGuardia situation is quite constrained as well.

Let me just ask if I may for the record a couple of things that would be of concern to those that are anxious about this particular legislation. I wonder, Mr. Shane, if you could simply for the record let us know how this would affect a fairly longstanding congressional policy to channel growth from the National Airport to both Dulles and BWI?

Mr. Shane. Dulles now has more operations every day than National does. That channelling process has worked pretty well for Dulles. I cannot speak to the number of operations currently serving BWI. I am not sure that a 5 percent increase would dramatically affect that policy, Senator.

Senator Robb. Another concern, as you know, there is a $1.5 billion capital development program that is now underway at the air-

port master plan that has been evolving over a period of time to address a number of commuter concerns in this area. Would this legislation, in your understanding, have any affect on the master plan, or the $1.5 billion development plan that is current in effect?

Mr. SHANE. It would not have an affect on the master plan per se. It would certainly increase the number of passengers using ground facilities at National. If the bill resulted in an increment in operations at National of up to 5 percent, then you would certainly have more passengers trying to use the facilities. I am afraid I just cannot speak very knowledgeably to the impact that might have on the current planning at National.

Senator ROBB. One other question, which the Chairman alluded to I believe just in passing, but the nighttime noise rule, the noise abatement program, and the phase introduction of quieter aircraft, can you give some indication of what impact the full implementation of this plan as it is currently drafted would have on any of those programs that are in effect?

Mr. SHANE. Well, without trying to pretend I am the expert on the consequences of the bill for all of those purposes, it is not clear to me that it would have any impact on the phase out of any type of aircraft. And I guess we have not analyzed what its impact would be from the standpoint of noise management. We have certainly understood that an increment in operations is likely to increase noise exposure. But I cannot tell you precisely how our implementation of this legislation would affect or cross with the noise management plan in place at National.

Senator ROBB. Mr. Chairman, I might ask Mr. Shane if he could, simply because there are concerns that have been raised, if any analysis could be brought to bear on those particular questions that would help those who use the airport and are affected by its operations and be furnished to me, I would be grateful for it.

Senator FORD. Let me say to my good friend that nothing in this legislation precludes the airport from inserting its own rules. So if you have any fears that this is going to override National, it is my understanding that it does not. And they still would have the ability to control their own being.

Senator ROBB. Thank you, Mr. Chairman.

In part what I am trying to do is what you had suggested earlier, address what might be unwarranted fears about the effects of this particular legislation here.

Let me ask just one other that does go directly to the safety question, both with respect to concerns about the current operation as well as the Washington control tower to handle additional traffic in this area. Would you comment on its ability to handle traffic beyond the current approximately 2,000 flights a day that it does handle and/or any direct safety concerns about either a 5 percent increase or lifting of the high density rule altogether?

Mr. SHANE. Yes, Senator Robb. I would say that there probably is not an enormous concern about the ability of the air traffic control system to handle a 5 percent increase safely. In fact safety is not at the center of the Department of Transportation's and the FAA's concern about the legislation, because we do feel that these flights can be handled safely.

Flow control management means that if you do not have a place to land your airplane you do not get to takeoff from your originating airport. And the consequence of flow control management applied to a lifting of the cap on slots at the high density rule airports means necessarily that you would have a dramatic increment in the delay experience, not only at the high density rule airports, but at airports that are connected through the system to the high density rule airports.

And that has been our concern. It is the reliability of the system, again, rather than safety that has concerned us. I will say that going beyond the 5 percent that is discussed in the legislation, I think we can all understand that eventually you will be taxing already stressed resources, and at some point, I do not pretend to know exactly where that point is, you may begin to see a breakdown in quality.

The legislation would not, I think, approach that point, and we certainly want to be on top of it long before we got there. We are not raising a safety concern about the bill, we are simply raising a concern about the reliability of the system to the travelling public.

Senator ROBB. One final question if I might, Mr. Chairman. I would just like to quote from the Metropolitan Washington Airports Act of 1986, a provision that "The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the high density rule at Washington National Airport, and may not decrease the number of such takeoffs and landings except for reasons of safety."

Do you foresee any reason that as a matter of policy, putting aside the buy-sell rule in terms of slots and what have you, that this particular policy ought to be abandoned at this time.

Mr. SHANE. Well, I have expressed reasons why I do not think it should be abandoned at this time. But beyond policy, the Department of Transportation, along with several other parties, were part of a deal back then, and what I have said in my testimony is that of course we would be reopening that deal through this legislation, at least for Washington's purposes.

Senator ROBB. Thank you, Mr. Shane. As one who was involved in that deal, if you will, there is a certain amount of sensitivity to——

Senator FORD. I have always preferred to call it an agreement.

Senator ROBB. Mr. Chairman, I was simply quoting from a witness in this particular case.

Senator FORD. Repeating what he said, yes.

Senator MCCAIN. Mr. Chairman, could I briefly follow up on one comment.

Mr. Shane, you assume that the numbers of flights will automatically increase at these high density airports?

Mr. SHANE. If I left that impression, then I did not mean to. Up to 5 percent, I guess, is what the legislation would permit, and I was simply using, if you like, a worse-case scenario.

Senator MCCAIN. You state that the airlines operate more than the optimum number of flights temporarily in order to prevent permanent loss of the slots. So if they do not feel that pressure to operate additional flights in order to protect the slots, can you not make a case that they might even decrease?

Mr. SHANE. Well, you are talking about the incumbents, and we are envisioning, if indeed the bill works as the Committee would want it to, a raft of new entrants coming in. So you would have a sea change in the kind of demand for operations.

Senator MCCAIN. Depending on the market.

Mr. SHANE. Well, these are markets which, I think we can predict reliably, would see an enormous increase in demand.

Senator MCCAIN. Thank you for allowing me the time.

Senator FORD. The fellow that you had the colloquy with, Senator Kasten.

Senator KASTEN. It is frustrating, I might say, Mr. Shane. I mean we are basically back where we were. In particular, the rules that you talk about on page 12 did not substantially affect the availability of slots to new entrants at all. I think you could get rid of some of the qualifiers there and say it did not address it at all. To talk about whether or not a commuter airline is 75, 74, or 76 seats is so far away from the basic problem and discussion that to suggest any responsiveness to our concerns is disingenuous.

I mean, you said to the Chairman that you wanted to work with Congress, and you did not think it would be right if you closed down the rulemaking with that particular item. The spirit of what we are working with here is not being addressed by 75, 76, or 74 seats on a commuter. I mean that is as far away from the basic question of allowing new entrants and limited incumbents slots, and the utilization of the slots that are presently there, as you could get, and still kind of come within the general scope of the instructions in the appropriations bill.

Do you agree with me?

Mr. SHANE. Yes. The purpose of that change was not the purpose of this legislation.

Senator KASTEN. On page 11 of your statement you say that you think that slot sales occur infrequently because they are "being used at their highest and best use." Now that highest and best use by your definition, with the use-or-lose rule, is at 65 percent. Why is not a higher and better use at 75 percent? Why does not the DOT adopt an 85 percent use-or-lose rule, as long as this slot situation continues?

Sixty-five percent is not the highest and best use. There is a higher and better use that is possible.

Mr. SHANE. That is the kind of question, it seems to me, that deserves vetting with the industry. What we are trying to do is come up with a rule that works as a practical matter for the industry. And it may very well be that increasing that percentage would in fact work. I do not know that today. And that would have to be the subject of the kind of rule making procedure that we usually engage in.

Senator KASTEN. That is not unlike the answer you gave me the last time when we had this discussion. What have you done with the 65 percent question since we had this discussion last? Is it an issue that is just off the table?

Mr. SHANE. No. No issue is off the table, Senator. In fact, I am having difficulty answering the questions because they are all on the table.

Senator KASTEN. They have been on the table for 21 months.

Mr. SHANE. It has been on the table for 21 months, and certain changes have in fact been made. We have not, as I said at the outset, found the kind of solution that we are completely satisfied with. And if adjustments of the kind that you are suggesting do in fact prove to work better than the present rule, then those are adjustments that can be proposed and adopted.

But thus far, they have not been slam-dunk issues for us. They just have not produced the kinds of dividends, in our analysis, that we would have expected.

Senator KASTEN. What is the reason why the Administration has not decided to go to 75 percent?

Mr. SHANE. I cannot give you a specific answer to that question. I would be happy to supply it for the record.

[The following information was subsequently received for the record:]

The 65 percent use-or-lose requirement that we now employ is based on the fact that many flights are not operated on weekends. Thus, the highest percentage they can realize is about 71 percent. (5 out of 7). We reduced this to 65 percent to allow occasional, unavoidable cancellations. We have considered applying a higher use-or-lose percentage to the weekday flights as a way to ensure higher utilization of those weekday slots that are in greatest demand. While we have not dismissed this idea, we do not expect it to have a significant effect on the availability of slots on the market, since the carriers have shown that they will do whatever is required to keep slots because they are so valuable for providing service.

Senator KASTEN. On the same subject, and I want to go to the bottom of page 12, where you say that, "Our observations suggest that carriers will in fact operate more than the optimal number of flights temporarily in order to prevent permanent loss of the slot when the present flexibility is denied them," is there not a way, or should there not be a way for the Department of Transportation to say that we understand the letter of the rule, but we also understand the spirit of the rule? And the letter and the spirit of the rule both are saying that we want these slots used? And our definition right now I have used is 65 percent.

We see three or four months of less than optimal activity on a slot, and then we see you pull in another flight to up usage—and you say in your own testimony, you have watched this happen. Now when that happens, would it not be within your jurisdiction to say you might be meeting the letter of the law, but this sure is not the spirit of the law, and if we see you doing this again with that flight or with that slot, you are going to lose that slot? Have you ever done that? Do you not think that would be consistent with what we are trying to do here?

And it is the kind of thing, frankly, that if you will not exercise your own ability to do, we will legislate it. You are admitting here that you see it happening. So we are all now in agreement that this happens. Now the question is, why do you not do something about it?

Mr. SHANE. The adoption of the 65 percent standard was done in keeping with our understanding of the kinds of flexibility that air carriers reasonably need in their operations to any airport. If in fact you see what you might think of as an abuse of the rule, I do not think it is appropriate to go in and say, well, that rule does not apply to you anymore, because we think you are taking advantage of it unfairly. I think you have to change the rule.

Senator KASTEN. No, the rule should be that is not yours any more, because you are artificially increasing the usage of it.

Mr. SHANE. I think you would have to change the rule, Senator. All I am saying is that once you hand that kind of discretion to any administrator, you are opening the floodgates to lots of unpredictable decisions by the Administration. And I do not think that is the way to do business. I think if we do not like the way the rule is working because there have been too many abuses of it, and that is a matter of judgment, I do not know whether there have been too many yet, but if there were too many, then I would argue for changing the rule, not saying you cannot use the rule because you have been using the rule in the wrong way.

Senator KASTEN. And you would argue that you should change the rule or that this Committee should change the rule?

Mr. SHANE. I think we should change the rule. Ideally, I think the system works better when you have the people closest to the action, the FAA, writing and implementing the rules.

Senator KASTEN. It has not happened in 21 months. I just have one other comment. It seems to me that you maybe should change these rules, but it takes you an awful long time to change those rules, and that is why this Committee is going to legislative to change those rules.

Mr. SHANE. Senator, it does not take us long to change the rules when we are convinced that we have a better way to change the rules. And if we had that conviction, the rules would be changed. The Secretary of Transportation has been spending a lot of time thinking about these rules and he has not been convinced by anything he has seen that there is in fact a better solution out there.

This legislation, in our judgment, with all due respect, is not a better solution.

Senator KASTEN. Well, the other options that we might do is simply legislate 75 percent, or somehow figure out a way—you say you can see these people, in effect, violating the spirit of the rules—figure out a way that we change that.

Let me switch gears. I do not think any of us on this side of the table followed your economic analysis of the ownership of slots. But let me just ask, when we in 1969 established slots and reaffirmed, when the buy-sell rule came in, that the slots specifically remained public property and could be recalled at any time, are you saying that the slots are no longer public property?

Mr. SHANE. No. I was offering—actually, I was quoting or paraphrasing the economists study of the impact of airport constraints on airline competition that was done by the Department of Transportation. For the purposes of pure economic analysis, it is true that there is an opportunity cost even to an incumbent which received a slot without any cash outlay. I appreciate Senator McCain's reaction. It is not what an accountant would say, perhaps. And it perhaps may not even be relevant to the kinds of proposals that we are dealing with today.

But the fact is, from the standpoint of economic policy, these slots do now have a real economic cost, even to incumbents that received them without payment.

Senator KASTEN. But these slots specifically remain as public property and could be recalled at any time, is that correct?

Mr. SHANE. Yes.

Senator KASTEN. Mr. Chairman, thank you.

Senator MCCAIN [presiding]. Senator Danforth.

Senator DANFORTH. Thank you very much.

Mr. Shane, it is going to be no surprise to you that my concern is for TWA, which is a major, major player in my state. It employs a lot of people in my state, and the concerns about TWA and its future are very, very pervasive, particularly in the St. Louis area and in the Kansas City area.

Let me ask you to just comment or correct my analysis. My concern is that under the present system, with the creation of slots, the buy-sell rule, and also the government grant of international certificates and the ability of airlines to sell those certificates, we have created, we being the government, an economic incentive for entrepreneurs to take over airlines and then sell off the pieces and leave us with something less than a viable airline.

Correct me where I am wrong.

But for the artificial act of government, there would be no slot for an airline to buy or sell. In other words, the government, by its action, has artificially created a scarcity. It has limited the number of flights that can takeoff or land from an airport. And by limiting that, it has created something of value.

Mr. SHANE. I agree completely with that analysis.

Senator DANFORTH. In an absolutely free market system, that thing of value would not have been created, and would not be an asset that could be bought or sold.

Mr. SHANE. I am not sure I would call it an absolutely free market system. I think you are suggesting that there would be no scarcity of landing and takeoff slots in a system without a high density rule, and that therefore there would be no economic value to the——

Senator DANFORTH. There would be nothing to trade?

Mr. SHANE. Yes. Correct.

Senator DANFORTH. It is like medallions on taxicabs in New York. The limitation of who can do what.

Mr. SHANE. Yes.

Senator DANFORTH. Now the ability to takeoff and land, that is, the availability of the slot is something that is conferred by government, free of charge, on certain airlines, correct?

Mr. SHANE. Yes.

Senator DANFORTH. So the government has created an asset and has given that asset to the airline. That asset, in turn, can be traded by the airline, or in substance, by the entrepreneur who controls the airline, and the proceeds can be pocketed, right?

Mr. SHANE. Once the government says so. I mean it was the promulgation of the buy-sell in the slot area that permitted that to happen. Without a buy-sell rule it would not have been possible.

Senator DANFORTH. The present law with respect to slots, something that was artificially created by government and given to the airline in question can then be sold, and the change can be pocketed, correct?

Mr. SHANE. That is right, Senator.

Senator DANFORTH. And if the entrepreneur who owns the airline wants to use the proceeds to better the airline, he could do so, right?

Mr. SHANE. Correct.

Senator DANFORTH. And if he wants to take a trip to Las Vegas or the Bahamas or to buy some other business, he can do that, right?

Mr. SHANE. Yes, sir.

Senator DANFORTH. Okay. Now the same reasoning is true with respect to international certificates. In other words, the government artificially limits the number of flights and where the flights can be to and from, and assigns those rights to certain airlines, correct?

Mr. SHANE. With one amendment. It is not our government unilaterally that limits those opportunities. It is usually the unwillingness of a foreign government to allow unlimited entry into an international market that creates that scarcity of opportunity. The U.S. Government seeks the most open possible opportunities for our carriers in foreign markets. So it is really a bilateral agreement, if you will, that creates that scarcity, rather than U.S. Government fiat.

Senator DANFORTH. But the U.S. Government does allocate these routes, correct?

Mr. SHANE. When we have a limited entry route, such as a route to London——

Senator DANFORTH. Let us say from Chicago to London, just as an example.

Mr. SHANE. That would be an excellent example, Senator. Yes, then it has to be allocated by the Department of Transportation.

Senator DANFORTH. And the Department of Transportation, when it makes that allocation, does not charge any money for the right to fly, does it?

Mr. SHANE. It does not.

Senator DANFORTH. And in turn, that freely granted right, artificially created, can be—at least this is now the theory of some—sold?

Mr. SHANE. The Federal Aviation Act says that international route opportunities may not be transferred without the approval of the Department of Transportation, which is another way of saying——

Senator DANFORTH. I am absolutely well aware of that. And I am very concerned about how that is going to be applied by the Department of Transportation.

Mr. SHANE. Yes.

Senator DANFORTH. But let me put it this way. There are those, or there is somebody, whose name begins with "I," who is trying to peddle for a very significant amount of money, an international certificate, correct?

Mr. SHANE. That is correct.

Senator DANFORTH. And my understanding is that the proposed sale price of the international certificate of the total route is $195 million, and part of that, of course, is equipment and so on, but the part allocable to the certificate is in the neighborhood of $120 million. Is that your information?

Mr. SHANE. That sounds about right. But as we get closer and closer to the substance of this transaction, Senator, I hope you will understand that it is in fact a transaction pending before the Department, and so there is a point beyond which I am not going to be able to supply very much more information.

Senator DANFORTH. Let me just tell you what my concern is. Here you have an individual who owns an airline. And it is guessed that the value of the airline is somewhere in the hundreds of millions of dollars, maybe $500 million. I think that is in the ball park of what people say the value is, maybe give or take $100 million. Let us say it is $500 million. And this individual can sell off a piece for $120 million, just a piece that was given to him or to his airline free of charge.

We are saying to him, by today's government policy, look, if you dismantle your airline you get $120 million, made possible to you by the act of your government. Similarly, with respect to slots, I am told that the sales price is something like $1.5 million a slot. We are saying to this individual, good news from Uncle Sam. Have we got a deal for you, Mr. Icahn. You get to dismantle your airline and we will pay you if you do that. If you shrink your airline, if you sell off the lucrative parts of your airline, you get money.

And we have created the situation where you get that money, and you pocket it and use it for anything that you want to use it for.

Where am I wrong in my analysis?

Mr. SHANE. Let us back away, if we can, from this particular transaction you are talking about. It seemed to us as we read the Federal Aviation Act that there was no question that Congress must have contemplated sales of this kind, but they applied to those sales in telling us how to deal with them a public interest standard. So anytime anybody proposes to sell an international route, they have to apply for permission to do that to the Department of Transportation, and the Department of Transportation must determine whether or not that sale should be authorized in the public interest.

There is, I think, a qualitative difference between slot sales and route sales. Maybe I am offering you just personal opinion here, but the fact is that an international route acquires at least some of its value by virtue of the service rendered by the carrier serving that route over time. It is not just a blank piece of paper that on day one has a particular value which stays with it over time. I think it has to do with goodwill, it has to do with the station, it has to do with the people that have been established in the foreign station and so forth. There are a variety of things that will go into the calculation of the value of a particular international operation which may not have any cognate in the transaction involving a landing or a takeoff slot. That is a distinction, perhaps, that is not very important for your purposes.

I will also say that we did not invent the idea of granting benefits to private parties through government award, that later took on value in the private sector, in the aviation business. The government has been doing that for a long time. When the U.S. Government announced that U.S. shipowners would be able to purchase ships abroad and use them in trade that foreign-built ships were

not normally used for, those little pieces of paper, those waivers, became marketable on the street.

Senator DANFORTH. I am sorry to cut you short. I have a problem, in that I have a meeting. I absolutely must be at the White House at 11:15 a.m. Let me just say this to you. We have created an enormously unsettling situation relating not only to people's lives and to the health of communities but to the ongoing viability and competition in the U.S. airline industry. We have done so because we have created artificial assets.

Maybe we have done it in other areas. I do not know. I do not think that is relevant from my standpoint. We have done it in this area. We have created wholly artificial assets that are very, very valuable and would not have any value other than the fact that government controls the right to use them.

Then we have said to the likes of Carl Icahn you go out and sell your airline piecemeal; that is the way to make a profit. That, in my opinion, is the worst kind of policy we can follow. I do not think it is justified by current traffic needs to have slots. I think that a decision that is made by the government as to whether or not to allow the sale of the Chicago-London route should be one that looks very carefully at the future viability of one of the eight remaining major competitors in the United States.

Beyond that, I think it is a very perverse situation, and I think we should correct it. I think we should correct this legislation with respect to the slots, and I think that if a Mr. Icahn is selling something that we gave him free and is making $100 million plus by selling something that we gave him free, the government should at least recapture a significant part of that sales price. That is my view.

I am sorry I have to leave in the middle of this hearing, and I appreciate your being here.

Mr. SHANE. Thank you, Senator.

Senator FORD [presiding]. I am sorry you have to leave, too, Jack. That was getting interesting. You see, I have been the mouse today for a change. Mr. Shane, I want you to know that.

Senator MCCAIN. As always.

Senator FORD. Quiet and easygoing.

Any other questions?

Mr. Shane, there may be questions that were not submitted here today by Senators, and there may be some questions sent to you in writing. I hope that you will respond in a timely manner so that they might be factored into the markup of this legislation.

Mr. SHANE. We certainly will.

Senator FORD. We appreciate your attendance today and look forward to working with you to try to work this particular problem out. We need your cooperation. Thank you.

Now we have a panel of five:

Mr. Robert Aaronson, President of the Air Transport Association of America;

Timothy Hoeksema, President, Chairman and CEO—how about that—MidWest Express Airlines;

Richard Cozzi, President, Trump Shuttle;

Richard Mathias, Senior Vice President, Government Affairs, Pan American World Airways; and

Morris Sloane, Director of Aviation Operations, Port Authority of New York.

We will take the witnesses in the order in which they were called, so Mr. Aaronson, you may go first.

STATEMENT OF ROBERT AARONSON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. AARONSON. Thank you, Mr. Chairman, and good morning.

Senator FORD. I might advise the witnesses that your whole statement will be included in the record as if given. If you hit the highlights, it would give the Senators a greater opportunity to ask some questions and maybe develop some dialogue. Thank you, Mr. Aaronson.

Mr. AARONSON. Thank you, Mr. Chairman. I am Robert J. Aaronson, President of the Air Transport Association of America. We appreciate the opportunity to discuss with you the provisions of S. 2851 which would free American travelers and shippers from the competitive constraints of the high density regime.

As you know, ATA is the trade association which represents 22 scheduled air carriers. My statement represents the consensus views of those carriers, including the following major airlines which would be directly affected by S. 2851: American; Continental; Delta; Northwest; Southwest; Trans World; and United. It does not, however, represent the views of USAir which supports the bill and has submitted its own statement.

Additionally, two of the association's member airlines, Pan American World Airways and the Trump Shuttle, have unique concerns with possible public interest implications that should be fully considered by the committee. Those members are presenting separate statements here today.

The Air Transport Association supports S. 2851. We believe enactment of the bill would represent a major positive contribution to improved capacity and enhanced competition in the airline industry. We believe that consideration of legislation like S. 2851 is long overdue, and we strongly applaud the committee for holding this hearing on the bill.

The varied and substantial benefits that airline consumers have realized over the last decade are attributable to the transformation of the airline industry from an industry wholly dependent upon the Federal Government to approve the routes it served and the prices it charged to a highly competitive industry. Unhappily, although airlines have become vigorous competitors—as evidenced by the increased choices air travelers enjoy among carriers on most city-pair routes, and by the anemic profit margins of our industry—government, at both the federal and local levels, in important respects has stymied competition. The ultimate victim of that throttling of market forces is the consumer. Enactment of the Airline Competition Equity Act of 1990 would go a long way towards resolving this problem.

Airport access restraints are the most notable examples of government impeding competition in our industry. The Federal Government and airport proprietors have limited at some airports the number of operations that air carriers can perform. Regardless of

which level of government is the source of this limitation, the result is the same: airport capacity is artificially constrained.

The best-known airport "slot" system is the Federal Aviation Administration's High Density Traffic Airport Rule. That rule is a 1969 regulation that the FAA issued, ostensibly as a temporary measure, to deal with traffic demands at John F. Kenndy Airport, LaGuardia Airport, Newark Airport, and O'Hare Airport. (Newark Airport was subsequently deleted from the high-density airport rule.) It limits the number of hourly instrument flight rules operations at the covered airports and allocates those operations by type of user: air carrier, commuter, and general aviation.

Air transportation has changed profoundly in the last two decades but the high-density airport rule has remained essentially the same. That is a sobering realization. What was to have been but a temporary response to air traffic control system limitations has become a monument to the failure of that system to meet the needs of the traveling and shipping public.

We suffer daily because of the inherently arbitrary restrictions of the rule. To state the obvious, but often overlooked, truth: the high-density airport rule means that an airline does not have the freedom to operate at the covered airports at the times and with the pattern of service that consumer demand would warrant. Instead, an airline must tailor its operations to the times and frequencies that its slots permit. That is not the way to meet the needs of the public.

Having been saddled with the high-density airport rule for over two decades, we strongly support the Committee in this effort to relieve the industry of this burden. The fact that this "temporary" rule has spanned five presidential administrations is unsettling. Its persistence is a stark reminder of the failure of government to respond adequately to capacity issues that were first recognized in the 1960s. S. 2851 represents a turn-around in government policy that will be welcomed by air carriers and travelers alike.

Turning to the specific elements of the Airline Competition Equity Act of 1990, the airline industry supports the elimination of the high density airport rule. This has been the historic view of our industry. Elimination of the rule will induce the FAA to make air traffic control and other operational upgrades that are required to meet the long-term, consumer-responsive expansion of air carrier operations at the four high density rural airports.

During the transition period leading up to open skies, it will be important for the FAA to undertake a thoroughly planned comprehensive upgrade of air traffic controller resources affecting the four airports. Such an undertaking will be important to the successful termination of the rule and should include date-certain interim reports by the FAA to the committee as a part of a program of close continuing oversight by Congress.

We share the committee's desire to see the phaseout completed within 18 months of enactment of the bill, and we believe termination should occur as quickly as Congress is satisfied that the air traffic control system facilities serving the four airports can accommodate the increased operations at them.

We further believe that the legislation is on target in proposing tight conditions on any reimposition of high density rural restric-

tions. In addition, we believe the committee should add a Federal preemption against local airport authorities acting to reimpose hourly restrictions on air carrier operations.

Another essential ingredient, which should be included in legislation such as S. 2851 is a federal preemption provision aginst local airport authorities acting to reimpose hourly restrictions on air carrier operations. Consequently, the high-density airport rule legislation must expressly provide that no state, locality, or interstate agency shall restrict the number of air carrier operations at any of the four airports.

We also strongly support the new entrant slot pool provision of the bill. We believe it represents a workable solution to the demands upon existing slots by new entrant air carriers. The proposed slot pool would expand capacity and foster competition at high density rural airports.

Moreover, the proposed slot pool would leave undisturbed existing patterns of service at these airports. That is very important for the traveling and shipping public.

We do, however, question the decision to terminate the buy-sell rule before elimination of the high density airport rule. We also find problematic the decision to eliminate buy-sell retroactively to July 12, 1990 in terms of maintaining an orderly marketplace in capacity allocation.

No matter how one views the buy-sell rule, no other workable mechanism has been formulated to permit air carriers to trade slots. Although the bill would permit one-for-one slot trades, that provision would essentially lock each carrier into the status quo. It could not increase the total number of slots that it possessed.

Air carriers need a more flexible mechanism than that to obtain additional or more preferred slots. Hence, while the buy-sell rule is far from optimum, we believe that it should continue until termination of the high density airport rule. In the event that the committee decides to end the buy-sell provision immediately, an interim mechanism to meet slot needs must be developed.

In conclusion, we believe the committee is taking a positive step for the future of air transportation. We applaud the committee for taking this initiative to enhance capacity and provide opportunities for increased competition in our national air transportation system.

Thank you, Mr. Chairman.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR FORD AND THE ANSWERS THERETO

Question. Your testimony indicates two areas of concern: preemption and the need to continue buy-sell for 18 months until the High Density Rule is eliminated. Please explain how your preemption provision would work. Also, could you elaborate on your suggestion for a Congressionally mandated review by FAA of updating the air traffic control system.

Answer. First, with respect to preemption, as my statement before the Committee indicated, the air carrier industry shares the Committee's desire to see improved capacity and increased competition at the four High Density Rule airports. We believe, as do the sponsors of S. 2851, that the only way to achieve these goals is through elimination of all hourly operating limits.

Unfortunately, as the Committee knows at least one local airport authority—the Port Authority of New York and New Jersey—testified at the hearing that it would

reimpose hourly restrictions on flights if the federal rule were lifted. Therefore, it would be less than forthcoming for the air carrier industry to be silent on the issue of federal preemption, knowing full well that local restrictions might be imposed when the high density rule is eliminated.

As to the specific question of how preemption would work, we recommend that language be included in the bill to expressly provide that no state, locality, or interstate agency shall restrict the number of air carrier operations at any airport. We certainly believe that is consistent with the intent of the legislation.

In answer to the second part of your question, I believe we all anticipate that traffic at HDR airports will increase once hourly restrictions are lifted. For that reason it would seem prudent for the FAA to give immediate attention to upgrading the air traffic facilities serving the four HDR airports. As a function of its oversight responsibility, the Committee should oversee and review that process.

The industry has a list of specific recommendations for improvements. However, since the list is extensive, it is being forwarded to you separately.

Question S. 2851 would limit slot trades to one-for-one. You argue that buy-sell is needed for 18 more months. Would you favor allowing carriers to trade slots on an unequal basis (e.g., 2 for 1)?

Answer. As opposed to the one-for-one trade provision currently in the bill, I would favor 2 for 1. However, uneven trades are only marginally more useful than even trades. If a carrier doesn't need slots, it doesn't have, and doesn't need. If slots can't be bought and sold, they should at least be available for lease. Leasing would preverve a workable, although less than perfect, market for carriers, and the public in capacity allocation.

Senator McCAIN [presiding]. Thank you, Mr. Aaronson.

Mr. Hoeksema, welcome back.

STATEMENT OF TIMOTHY HOEKSEMA, PRESIDENT, CHAIRMAN AND CEO, MIDWEST EXPRESS AIRLINES, MILWAUKEE, WI

Mr. HOEKSEMA. Thank you, Senator McCain and Members of the subcommittee. It is a pleasure to be here today to voice my support for the Airline Competition Equity Act of 1990. I congratulate the subcommittee for presenting this workable piece of legislation that addresses one of the most serious problems affecting competition in the airline industry.

A little more than three months ago I appeared before this subcommittee to comment on S. 1741, the Airline Competition Act of 1990. In those comments, I emphasized three obstacles to MidWest Express extending its service to the public and providing effective competition. Of those three obstacles, S. 2851 addresses the most important, a slot control system that has locked out competition to some of the most important markets in the industry.

There are four key features of this legislation: One, ending the buy-sell rule; two, creation of a new entrant slot pool; three, defining new entrants as carriers holding fewer than 12 slots at the relevant airport; and four, sunsetting the high density rule within 18 months unless the administrator certifies that continuation of the rule is needed for safety reasons. MidWest Express supports all four elements of the legislation.

As I mentioned in my previous testimony, the FAA's buy-sell rule has been an utter failure in providing an opportunity for new competition at high density airports. To my knowledge, no slots have been purchased by small carriers as a standalone transaction since the beginning of the buy-sell rule. The buy-sell transactions generally have involved small carriers selling slots to larger ones often just before the small carrier ceases all operations or large carriers trading their grandfathered slots as part of transactions

for gates or other scarce airport resources or as settlements to litigation or as assets acquired in mergers.

The buy-sell rule disproportionately benefitted large established carriers to the detriment of new entrants. Slots of tremendous but uncertain value were given to large carriers for free. If those carriers ever sell their slots, new entrants who often have the least cash and fewest airport facilities will probably be forced to pay extravagant prices for access to some of the most important airports in the country.

To compound the problem, the buy-sell program places large carriers in the enviable position of being able to control with whom they compete. If a large holder of slots wants to sell some of its slots at an airport, it can solicit bids from a few carriers with whom the slotholder is in the best position to compete and avoid soliciting bids from carriers that pose a greater competitive threat.

Large carriers often have an advantage under the buy-sell rule because they have more flexibility to accept short-term leases. They also have the capability of disguising underutilization of slots with their large number of operations in the slot control hours.

For years, MidWest Express has attempted to purchase slots but has been unable to do so. This is not because of a lack of trying or a lack of financial resources. Slots simply have not been available for us to purchase despite our repeatedly surveying airlines for the availability of slots. Not once have we been asked to bid on a Washington National slot. The activity of this subcommittee, however, may have already produced some benefits because within the last two weeks we have been asked to bid on some LaGuardia slots.

In short, we do not believe that continuation of the buy-sell rule provides any hope that Midwest Express will be able to obtain a minimum number of slots to provide services on a cost-effective basis at National and LaGuardia Airports. Accordingly, the elimination of buy-sell will have no negative impact on Midwest Express. Instead, the elimination of buy-sell may have an immediate, positive impact on operations at the airports. It might reduce congestion at airports, because carriers will have less incentive to maintain slots for speculative reasons.

Of all the provisions of S.2851, we are most pleased that S.2851 creates a pool of slots exclusively for the use of new entrants. This will meet the needs of new entrants that have suffered through the frustrating years of trying to obtain slots under the buy-sell rule. Midwest Express had suggested that the FAA create a pool of new entrant slots early in 1989. We believe that is an approach that can be easily administered, is fair to all carriers and cannot be abused.

The slots acquired from the pool would be subject to use or lose requirements. The new entrant slot pool would be created by increasing the number of slots up to 5 percent in excess of the current number of slots. For several reasons, however, we believe far fewer slots than 5 percent will be needed for the foreseeable future.

First, there are not many potential new entrants in the industry that would be eligible for slots. With the consolidations in the industry, there are probably less than a handful of established carriers that would seek slots at each of the slot-controlled airports. Moreover, there have been very few start-up carriers in recent

years, so there is little likelihood that a large number of new carriers will seek slots.

Second, the structure of the pool will prevent small carriers from seeking slots for the ulterior purpose of selling them. This will reduce demand from speculators.

Third, most start-up airlines will not, for operational, financial or other reasons, be in a position to acquire all ten or 11 potential new entrant slots immediately. Many start-up carriers would opt for slow, steady growth, as long as they have assurance that there will be slots available from a dependable source when slots are truly needed.

For the foregoing reasons, we do not expect that the new entrant slots will significantly affect congestion, delays, safety or noise at the airports. Not only will there be few new entrant slots in use, but we expect fewer operations from some large incumbent carriers that may have been conducting marginal operations to maintain slots for speculative purposes.

As an indication that there is some room to increase the number of slots above the current high density rule, the FAA just last week, for the second time this year, granted America West Airlines an exemption from the high density rule to operate four slots, slots above the limit in the rule. The FAA specifically found that there was no impact on safety.

Two aspects of the slot pool provision concern us. This concern stems from the history of DOT ignoring the wishes of Congress with respect to the slot program, which was demonstrated by DOT's failure to abide by the requirements set forth in Section 349 of the fiscal year 1990 Appropriations Act for the Department of Transportation.

Our first concern involves the requirement that no more than 5 percent of the number of slots in an airport will be available for the new entrant slot pool. We presume that there was no minimum percentage established in S. 2851, because there is an expectation that far less than 5 percent will be needed to meet the demand for slots by new entrants. Nevertheless, we hope it is made clear in the legislative history that it is the intent to have a pool with a sufficient number of slots to meet the demand of new entrants and that DOT does not have discretion to limit the number of slots available in the pool if there is a demand for all 5 percent.

The second area of concern is that S. 2851 does not state that new entrant slots should, to the maximum extent practicable, be available from all slot-controlled hours. Slots from the fringes of slot-controlled hours are not very useful in establishing a workable schedule of operations.

For example, early morning slots are not practical for carriers flying to the East Coast from other time zones. Again, we ask that the legislative history clarify that new entrant slots should be available throughout the slot- controlled hours, not just bunched at the fringes.

Midwest Express currently holds just four slots at Washington National and four slots at La Guardia. Four slots which permit just two flights per day are not sufficient to compete efficiently in those markets. It does not permit the frequency of flights necessary to attract passengers, and it underutilizes staff and assets that are dedi-

cated to those airports. It also eliminates any possibility for Midwest Express to expand operations to serve new hub airports. The definition of "new entrant" in this legislation permits a new entrant to acquire sufficient slot holdings for efficient operations.

We support the provisions in the new legislation that call for the sunset of the high density rule. We believe it is time to test the necessity for the rule. Congestion and noise are problems at many airports, and yet airlines and communities have been able to deal with these problems without the need for slot control. We believe that airlines under motivation to publish realistic time schedules will adapt to the elimination of the high density rule, and that free market forces will provide incentives for airlines to avoid wasteful delays. Noise controls may be imposed through other, more direct mechanisms.

The only legitimate rule of the FAA in administering the high density rule is to protect safety. S. 2851 provides adequate protection from any safety concerns that may arise from the elimination of the high density rule. The legislation provides for a reimposition of the rule in situations where the administrator certifies there is a need for safety reasons.

In conclusion, we congratulate the sponsors of S. 2851 for devising realistic legislation which will benefit the traveling public by providing new competition and restoring the values that are at the core of the aviation industry. It is important to recognize that the problems associated with slot controls are not problems that affect just the airports where slot controls have been imposed. It is a national problem. It affects communities such as Milwaukee, Wisconsin, Omaha, Nebraska, Wichita, Kansas, and other cities where new carriers will be able to introduce nonstop service to major airports if this legislation is passed. The legislation offers hope that these communities will reap the benefits of competition that are enjoyed elsewhere.

Senator FORD [presiding]. Mr. Cozzi?

STATEMENT OF RICHARD F. COZZI, PRESIDENT, TRUMP SHUTTLE

Mr. COZZI. Good morning, Mr. Chairman. I am Dick Cozzi, President of the Trump Shuttle, and we appreciate the opportunity to appear before your distinguished Committee to comment on S. 2851, the Airline Competition Equity Act of 1990.

The Trump Shuttle understands both the Committee and industry concern regarding airline competition. We share your interest in promoting the fair and equitable treatment of all carriers. However, the bill before you would deliver a crippling anticompetitive blow to the Trump Shuttle and its highly-regarded competitor, the Pan Am Shuttle. Without slots to control the regular, orderly, hourly departures and arrivals of both shuttles we could not provide our unique air service in the safe, reliable, efficient manner the Northeast business community demands.

Let me explain why the shuttle business is so unique, and so depends upon slots. We provide a service more akin to mass transit. Walk up, hourly air service with guaranteed seats between the short-haul business and Government centers of Washington, New York and Boston. Four million passengers a year depend upon our

reliability, our efficiency, and on-time departures and arrivals. We save them valuable time. They set their watches by our operation.

We cannot meet the demand for reliable, safe, on-time shuttle service at the Nation's high density airports without the structure provided by the slot system. Slots enable us to safely depart and arrive without taxiway chaos and without excessive delays. If we and others are to survive in this industry, we must have stability and protection from Government interference which proposes changes to the rules in the middle of the game.

Now let me briefly address the two issues of the bill before you. First, we feel the buy-sell rule should be maintained. Market forces, not Government regulation, should fairly allocate slots. Does it make sense to offer yet another quick fix for other carriers which eliminating the buy-sell rule would do, while at the same time totally disrupting the reliability of the established shuttle carriers that 4 million travelers use?

Additionally, we feel that the bill as drafted clearly gives competitive advantage not only to new entrants but also to established carriers which will not suffer the loss of a major portion of their assets, i.e., slots, in the process. Secondly, we feel that lifting the high density rule would be highly undesirable for safety reasons. Air traffic controls delays increased 100 percent in 1989, and another 40 percent so far this year at La Guardia Airport. The Northeast corridor is already saturated, with bad weather making delays even more pronounced.

Adding more traffic, which eliminating the high density rule would do, will result in longer taxi wait and longer gate holds. This will lead to aircraft gridlock on the ground, increasing the likelihood of ground incidents, or likely delays, increased noise, and increased fuel consumption which we can ill afford. We do not believe that the traveling public will find that acceptable, or consistent with their expectations of Government policy concerning safe and efficient air travel.

We urge the members of this Committee to consider the unique nature of the shuttles, and to find an approach to competition which does not destroy us in the process. At the very least, an exemption for Northeast shuttle operations should be seriously considered as an integral part of the bill. We also believe the bill should include provisions to allow the sale of slots after January 12, 1990, as part of an overall or partial transfer of ownership of a carrier.

Finally, let me suggest that competition could increase dramatically by increasing the air traffic control system's capacity. Congress should increase funding for manpower training and equipment for the ATC system in order to improve competition and enhance safety.

In conclusion, the Trump Shuttle strongly believes that reasonable market access for new entrants can be achieved through the creation of a new slot pool as provided in the bill. However, we need our slots for survival.

[The statement follows:]

TESTIMONY OF RICHARD F. COZZI
PRESIDENT OF TRUMP SHUTTLE

Good morning, Mr. Chairman, I am Richard F. Cozzi, President of the Trump Shuttle. We appreciate the opportunity to appear before your distinguished committee to comment on S. 2851, the Airline Competition Equity Act of 1990.

The Trump Shuttle understands both the Committee and industry concern regarding airline competition. We share your interest in promoting the fair and equitable treatment of all air carriers. In this regard we support the concept of creating an equitable mechanism to allow new entrants the opportunity to enter the market at slot controlled airports such as the slot pool provided for in Sec. 5. (a) of the Airline Competition Equity Act. Further, we agree that the air traffic control (ATC) system requires vast improvements if the industry is to keep pace with the demands of the travelling public. Nevertheless, we believe that, while S. 2851 attempts to correct perceived inequities for new entrants at slot controlled airports, at the

same time it delivers a crippling anti-competitive blow to tow incumbent carriers - the Trump and Pan Am Shuttles. The provisions in S. 2851 will critically damage the value of both shuttles' assets and preclude their ability to provide traditional hourly shuttle service in the safe, efficient, reliable manner they now deliver.

THE TRUMP SHUTTLE TODAY

Scarcely a year ago the Trump Shuttle itself was a new entrant into the aviation marketplace. We purchased our slots and equipment from the failing Eastern Airlines and created market history by increasing our market share from approximately 17% to a full 50% in less than a year. Our improvements have radically changed customer service. We have provided improved planes, new services, and even guaranteed performance.

We have concentrated on increasing the level of safety and upgrading the quality of service available to our customers. In addition to our initial investment we have spent over one million dollars per aircraft to refurbish their interiors, inspect and repair for structural integrity, and to install TCAS II and windsheer detection equipment. The Trump Shuttle takes pride in the fact that it was the first domestic passenger air carrier to install hush kits to conform to Stage 3 noise requirements.

The Trump Shuttle has undertaken the enormous task of building the highest quality shuttle system in competition with the well-respected Pan Am Shuttle. Together we provide the best service for millions of satisfied air travellers in the shuttle market.

We paid the price as a new entrant-as Pan Am did - and we should not now be penalized for making our airline a success in the environment of deregulation. If we and others are to survive in this industry we must have stability and protection from government interference which changes the rules in the middle of the game.

SHUTTLE SERVICE CAN NOT EXIST WITHOUT THE SLOT SYSTEM

Since 1961 shuttle service between Washington, New York, and Boston has become an institution offering the business community in the Northeast corridor a unique, no-reservation, dependable service of convenient transportation on which millions of business travelers have come to rely.

The Shuttle operation provides a unique service to the travelling public. The service is more like mass transit than traditional air transportation. Moreover, shuttle flights operate in short haul markets. And the shorter the journey, the more surface transportation is a competitive threat to air

transportatation if the predictablity and speed of flight is put at risk. A loss of slots would destroy all predictability, especially at densely used airports. The airports served by the Shuttle--La Guardia, Boston and Washington National--are among the nation's busiest.

The business consumer demands the convenience of the shuttle-type operation. Indeed, since 1961 well over 100 million travellers have been carried by the shuttles.

More than 4 million people fly the shuttles in the northeast corridor each year. Moreover, they want the convenience of arriving at the airport on the hour, without reservations, to board the aircraft just prior to departure. Most of all, they want to arrive on time during peak business hours. They have demanded and received this service for almost 30 years.

We can not meet the consumers' demands at the nation's high density traffic airports without the structure provided by the slot system. Slots enable us to safely depart and arrive without taxiway chaos regardless of the time of day, and to do so without excessive delays. Shuttles depend solely on the regular spacing of flights and cannot function any other way. Shuttles serve their business traveler constituency by guaranteeing on time, reliable and safe hourly service. Business, government and other institutions in the Northeast have built their schedules around

this consistent reliability. The volume of departures in 1990 simply cannot guarantee reliable hourly shuttle departures and arrivals without slots, unlike the less congested environment when shuttle service began in 1961.

The Airline Competition Equity Act seeks to eliminate barriers to entry at slot-controlled airports, based on the theory that the buy-sell rule has created those barriers. The very existence of both the Trump and Pan Am shuttles is evidence to the contrary. Each carrier paid substantial sums for the slots they now use exclusively for shuttle service, providing healthy competition in a unique market.

As a new entrant itself, the Trump Shuttle purchased 92 slots, some of which were in the most desirable time periods and therefore were the most expensive. Of the total investment of $365 million that we paid for the assets of the old Eastern Shuttle, a substantial portion of the purchase price was allocated to the value of the slots. If S. 2851 is enacted the Trump Shuttle will be forced to devalue a significant portion of its total assets without compensation. Pan Am will find itself in a similar position. We fail to see how such a substantial devaluation of two carriers' assets can possibly be justified as a benefit to competition.

We know that some of you share the view that the Shuttles are in a unique situation and deserve consideration. Thus, in the April 5, 1990 hearings on the original Danforth/McCain Aviation Competition Bill, Senator McCain said this to the Pan Am witness:

"Mr. Mathias, I understand you have a unique problem here. I frankly do not have any questions for you. I understand that it is critical to the continued successful operation of Pan American that they preserve their slots, which they did pay for."

Senator McCain also said: "I would like to say to you, Mr. Mathias, that you and other airlines who find yourselves in a situation where they made a substantial investment in slots, that it is not the intent of this sponsor of the legislation to deprive you of a very valuable and, in fact in your case, perhaps critical asset. So I hope you understand that when we continue to address the various aspects of this legislation." Trump Shuttle urges that the position be maintained!

BUY-SELL BACKGROUND

Pursuant to the Federal Aviation Act, DOT is charged with the responsibility of the efficient administration of federal air space. Increasing post-deregulation pressure from greatly expanded operations forced a search for an alternative

redistribution mechanism. This led DOT to select the buy-sell rule as the least undesirable alternative - rejecting auctions, government allocations, etc. By promulgating the buy-sell rule in 1986 DOT determined that market forces, not government regulation, could best allocate slots. Buy-sell represents a best efforts balance. Moreover in choosing the market-oriented approach of the buy-sell rule, the agency made a conscious decision to create permanent slots to encourage long-range stability in carrier marketing and planning.

During the past four years, DOT has actively promoted the purchase and sale of slots and has served as a clearinghouse to facilitate the transfer of these valuable assets. Undoubtedly, DOT and the Congress are both well aware that air carriers have listed slots as assets on their corporate books and encumbered slots in lending arrangements and, yet, neither the agency nor the Congress, until now, has taken steps to halt such actions. To knowingly orchestrate the creation of a secondary market for slots and then to eliminate it without recourse would be unthinkable and be grossly unfair.

Perhaps it would be useful for the committee to look back into the history of the buy-sell rule as a remedy for new-entrants to appreciate the fact that regardless of the remedy, solutions to new entrants difficulties have never been a panacea -- and never will be. In 1986 slots were withdrawn from

incumbents and reallocated to new entrants/small incumbents and buy-sell was implemented. Two years later out of the 140 reallocated slots only 15 were operated by their original recipients. The rest were sold for quick profit or never utilized.

Does it make sense then to offer yet another quick fix for new entrants which may devastate the long established shuttle service so critical to 4 million travellers a year, and possibly destroy two carriers on the outside chance that two new entrants might use a few extra slots? We believe that the price is too high for such limited benefits. Further it is obvious that S. 2851 as drafted, clearly gives competitive advantage not only to new entrants, but also to other established carriers which will not suffer the loss of a major portion of their assets in the process.

HIGH DENSITY RULE

In addition to our concerns regarding the buy-sell provisions in S. 2851, we do not agree that an expeditious lifting of the high-density rule is desirable.

Air Traffic Control (ATC) delays increased 100% in 1989 and another 40% this year at LaGuardia alone. The northeast corridor is already saturated causing interminable delays in bad weather

and other air traffic control situations. Consequently adding more traffic (even with flow control) will eventually result in increasing taxiway and gate holds producing an eventual gridlock of aircraft on the ground. This increased congestion will create greater likelihood of accidents on the ground; more lengthy delays for passengers; and an increase in fuel consumption which we can ill afford. We do not believe that the travelling public will find that acceptable or consistent with their expectations of government policy concerning safe, efficient air travel.

Even with improvements in the ATC system the reality is that airports such as LaGuardia and National will necessarily be limited by their ground space and cannot physically accommodate massive increases in air traffic. We urge you to carefully consider any changes in the operations of these airports which will exacerbate the current situation. We believe that S. 2851 will do just that.

Lifting of the high-density rule will have the same negative impact financially on the shuttle as elimination of the buy-sell rule. No one will loan money to a company making a product which doesn't work, let alone consider the purchase of the company. The shuttle would not work without slots. This is so because the appeal of the shuttle is its saving of time. No time wasted in making advance reservations; no time spent in changing tickets for a more convenient flight; but <u>most of all</u> no time wasted in

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departing or arriving because each shuttle flight has a guaranteed slot. The slot is the battery without which the shuttle doesn't work.

As you are surely aware, the Pan Am and Trump Shuttles are both on the market. If S. 2851 is adopted we have little to offer a potential buyer. What purchaser would be willing to pay for a shuttle without set hourly operating capability? We believe that the government should NOT so emasculate our businesses that we cannot continue service and compete fairly in the marketplace.

We urge the Members of the Committee to consider the unique nature of the shuttles and to find an approach to competition which does not destroy us in the process. We believe that at a minimum, a prudent measure would include provisions to allow the sale of our slots after July 12, 1990 as part of an overall transfer of ownership of a carrier and that the Administrator of the FAA should be directed to provide for such slots as may be necessary to permit the continued operation of the shuttle service as is now provided by Pan Am and Trump between LaGuardia and Washington National.

SLOTS ARE NOT THE PROBLEM

The Pan Am Shuttle and the Trump Shuttle are both struggling to stay afloat in the marketplace. Neither the Congress nor the

Department of Transportation should intervene in the free market process and hold our collective heads under water while throwing not just life rafts but whole rescue ships to other carriers. We have played by the rules of deregulation and we will continue to take our chances in that environment of free market enterprise, but our assets must not be dismantled and air service for millions of air travellers disrupted and made potentially unsafe.

Competition in the airline industry is a complex issue. High density airports and their safe management are also complex. There is no magic 18 month solution to the issue of competition or capacity. The slot mechanism is only a small component of the total system and is not the critical factor in determining the overall level of capacity or competition within the airline industry. Competition would increase dramatically in every market in the country, not just at slot-controlled airports, if we could achieve one goal -- increased capacity for the air traffic control system. Unfortunately the Federal Aviation Administration does not have the current manpower or technology to maximize the use of our existing airspace. The answer is simple -- Congress should increase funding for manpower, training and equipment for the air traffic control system. With that action alone, Congress could take a dramatic step to improve competition and enhance safety within the industry.

At the very least, an exemption for Northeast shuttle operations should be seriously considered as an integral part of S. 2851. We must keep our slots to maintain safe, reliable, on time service for the millions who depend on it every day.

CONCLUSION

The Trump Shuttle strongly believes that reasonable market access for new entrants can be achieved through the creation of a new slot pool as provided in S. 2851. We can state categorically that elimination of both the buy-sell rule and eventually the high density rule will result in significant and disturbing service disruptions. The resulting delays and potentially unsafe taxiway congestion would likely drive consumers away from airports, seeking other, less desireable means of transportation.

Since its inception, the objectives of the Trump Shuttle have been to provide safe, reliable, efficient, on time, friendly, clean and profitable air shuttle service. We have been accomplishing this according to shuttle passengers. However, this action would adversely affect our reliable operation to the disadvantage of air travellers.

We commend the Subcommittee for its vigilance in examining issues affecting the airline industry, but in this instance we strongly urge that Congress focus instead on the expansion of the capacity of our air traffic control system generally as well as on the more efficient use of existing capacity. Such an effort would pay substantial dividends because of the resulting increase in competition and enhancement of overall safety.

Senator FORD. Mr. Mathias?

STATEMENT OF RICHARD D. MATHIAS, SENIOR VICE PRESIDENT—GOVERNMENT AFFAIRS, PAN AMERICAN WORLD AIRWAYS

Mr. MATHIAS. Mr. Chairman, thank you for having my written testimony included in the record. I will highlight only one or two points from that testimony here this morning.

Basically, we are in much the same position as the Trump Shuttle. It is the potential impact of this bill as currently drafted on the Pan Am Shuttle which is of critical importance to Pan Am. As you probably know, the Pan Am Shuttle provides competitive service between La Guardia and Boston and between La Guardia and Washington's National Airport. Each of these shuttle flights operates to or from at least one high density airport. The Pan Am Shuttle could not operate without slots.

Now, the word "shuttle" in an airline context has come to mean an operation predictably available at a precise time each hour, speedily provided, without the encumbrances of advanced reservations and ticketing. If the right to take off and land at a guaranteed time slot is not assured, the product either could no longer be produced, or it would no longer be the on-time service that our customers demand.

From the day years ago when Eastern invented the shuttle, it has given travelers in the Northeast corridor two gifts—time and flexibility. In 1986, Pan Am brought a competitive situation to the shuttle market. We built our shuttle from scratch. We doubled the choice of hourly departure times, greatly improved aircraft comfort and introduced food service and other amenities which are now standard. That venture has been successful. It has been successful as proven by Pan Am's passengers carried: 6,433,595 shuttle passengers from October 1, 1986 when we started, to May 30, 1990.

Now, improved in quality as they are by competition, Pan Am and the Trump Shuttle can continue these services only if slots or some other form of guaranteed time access for landings and take-offs of shuttle flights is assured.

Now, some may argue that slots are a windfall to those carriers which applied them without payment when the slot system began. We are not talking about that here with the Pan Am Shuttle. We must note that we bought the slots to operate the shuttle for over $70 million in 1986. We now have a business that generates revenues using those slots, the airplanes which we furnished, people which we hired and trained, that generates a volume of $200 to $250 million a year in revenues.

Now, this fact is of paramount importance just now, when Pan Am is considering the sale of the shuttle in order to strengthen our financial position overall and to expand the system of Pan American World Airways throughout the United States and overseas. But if regular hourly take-offs and landings are not assured, the shuttle cannot continue its business and if slot sales were to be prohibited immediately, the shuttle itself cannot be transferred.

We are pleased that Senator McCain recognized in the April hearing when I was here to testify that "it is critical to the conven-

ient, successful operation of Pan American that they preserve their slots, which they did pay for." That is our point, and we hope the Committee will share his view.

We urge the Committee to revise the legislation so as to protect shuttle services. We suggest this can be accomplished by two steps. First, by modifying the current S. 2851 to authorize the Secretary of Transportation to preserve the guaranteed times for arrivals and departures of the shuttle flights after the current high density rule is ended. Second, and most importantly, it is essential that the Congress must allow the buy-sell mechanism to continue until the high density rule is terminated. So long as we have a slot system, we must have a mechanism for voluntary transfers.

At the very least, we strongly urge you to allow for the sale of existing slots as part of the acquisition of an entity or distinct operation such as Pan Am Shuttle. There, we are talking about the transfer of slots not in a speculative manner by traders, but transfer of slots for value along with the sale of a major division, or an entity of an airline, along with the other assets, people and operations that go with that operation.

These modifications would not conflict with the purposes or overall effect of the proposed legislation, but they very clearly are critical to Pan Am's recovery program, so in conclusion, Pan Am urges this Committee in the strongest possible terms to recognize the apparently unintended impact on Pan Am and on the public of the current S. 2851, to recognize our concerns, and at least to accept these changes which we propose to you.

Thank you very much.

[The statement follows:]

TESTIMONY OF
RICHARD D. MATHIAS
SENIOR VICE PRESIDENT-GOVERNMENT AFFAIRS
. PAN AMERICAN WORLD AIRWAYS
ON S. 2851
JULY 18, 1990

Mr. Chairman, Pan Am welcomes the opportunity to testify with respect to S. 2851. On April 5, 1990, I had the honor to testify with regard to S. 1741, a bill which also addressed the airport slot system.

While Pan Am recognizes the general goals which have led to the introduction of S. 2851, we cannot support its proposals to terminate the FAA's high density airport rules and to abolish the FAA's buy-sell procedures. Our concern is dictated by certain major considerations which I brought to the Committee's attention in April.

Pan Am is no longer one of the largest U. S. airlines. Counting all operations, Pan Am ranks only as number eight in terms of airline size, with just 6.8 percent of the industry's revenue passenger miles.

In terms of domestic operations, Pan Am accounts for only 2.2 percent of the industry's domestic RPMs, and is smaller than America West. Nevertheless, Pan Am is a vital part of this nation's air transport system and we provide essential and effective competition in both domestic and international markets. Unless modified, this legislation would do serious injury to Pan Am's recovery program.

Pan Am is primarily an international carrier, and its international operations are excluded from the buy-sell rules, but its international operations absolutely require domestic operational

slots. To be competitive, particularly in transatlantic markets, Pan Am has to provide reliable connecting service at its hub airports. At JFK, Pan Am has eight daily nonstop flights arriving from Europe and 15 such flights departing to Europe in time to connect with 58 nonstop domestic flights arriving or departing after 3:00 p.m. -- the time at which slot control at JFK commences. Feed traffic to and from interior U. S. cities is vital to the success of Pan Am's international operations so Pan Am's domestic flights must have reliable departure and arrival slots at JFK airport.

Because the slot system at JFK is significantly different from those at O'Hare, National, and LaGuardia airports, S. 2851 should be modified to exclude JFK from the mandatory elimination of the High Density Rule or to expressly allow broader discretion to remain with the Secretary of Transportation to control domestic flights at JFK. This is essential for coordination of domestic flights with the uncontrolled international flights of U. S. and dozens of foreign airlines.

Even more important from a public standpoint and more threatening to Pan Am, is the potential impact of this bill, as drafted, on Pan Am Shuttle. The Pan Am Shuttle provides competitive shuttle service between LaGuardia and Boston and between LaGuardia and Washington's National Airport. Each of these shuttle flights operates to or from at least one high density airport. Thus, the Pan Am Shuttle could not operate without slots. The word "shuttle" in an airline context has come to mean an operation predictably available at a precise time each hour, speedily provided without the encumbrances of advance reservations and ticketing. If the right to

takeoff and land in a guaranteed slot is not assured, the product either could no longer be produced or it would no longer be the on-time service our customers demand.

A primary purpose of S. 2851 is the desire to add new carriers to high density controlled airports. Pan Am submits that there is little merit to adding a new carrier to an airport if it drives another away. It must be made clear that this could be the effect with regard to the Pan Am Shuttle.

From the day Eastern "invented" the shuttle, it has given travellers in the northeast corridor two gifts: time and flexibility. In 1986 Pan Am added competition to the benefits of the shuttle market. It doubled the choice of hourly departure times, greatly improved aircraft comfort, and introduced food service. That the venture has been successful is demonstrated by Pan Am's passengers carried: 6,433,595 shuttle passengers from October 1, 1986, to May 30, 1990.

Improved in quality as they are by competition, Pan Am and the Trump Shuttle can continue these services only if slots or some other form of guaranteed time access for landings and takeoffs of shuttle flights is assured.

Some may argue that slots are a windfall to those carriers which acquired them without payment when the slot system began. It is important to note, however, that this is not true of Pan Am. Its slots were acquired by purchase at a price of over $70 million.

This fact is of paramount importance just now when Pan Am is considering the sale of the Shuttle in order to strengthen our financial position and expand our overall system. But, if regular hourly takeoffs and landings are not assured, the Shuttle cannot

continue its business. And, if slot sales were be be prohibited, the Shuttle itself cannot be transferred. We are pleased that Senator McCain recognized in the April hearing that "it is critical to the continued successful operation of Pan American that they preserve their slots, which they did pay for." We hope the Committee will share his view.

We urge the Committee to revise the legislation so as to protect shuttle service. This can be accomplished by two steps. First, by modifying the current S. 2851 to authorize the Secretary of Transportation to preserve the guaranteed times for arrivals and departures of the Shuttle flights after the current High Density Rule is ended. Second, it is essential that the Congress must allow the buy-sell mechanism to continue until the High Density Rule is terminated. So long as we have a slot system, we must have a mechanism for voluntary transfers. At the very least, we strongly urge you to allow for the sale of existing slots as part of the acquisition of an entity or distinct operation such as the Pan Am Shuttle. These modifications would not conflict with the purposes or overall effect of the proposed legislation. They very clearly are critical to Pan Am's recovery program.

In conclusion, Pan Am urges this Committee in the strongest possible terms to recognize the apparently unintended impact on Pan Am and the public of the current S. 2851, to recognize our concerns, and at least to accept the changes we propose to you.

Senator FORD. Mr. Sloane.

STATEMENT OF MORRIS SLOANE, DIRECTOR OF AVIATION OPERATIONS, PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Mr. SLOANE. Good morning, Mr. Chairman.

I am Morris Sloane, Director of Aviation Operations for the Port Authority of New York and New Jersey. I would like to have my full statement put in the record and present a summary to the Committee.

Senator FORD. Without objection, your total statement will be included in the record as if given, and we are very pleased with that.

Mr. SLOANE. Thank you.

The Port Authority is responsible for the operations of John F. Kennedy International, LaGuardia, and Newark International Airports. Kennedy and LaGuardia are two of the four airports subject to the FAA high density rule. The Port Authority strongly supports the continuation of the high density rule at LaGuardia and Kennedy. And while we are very supportive of new entrants, we seriously question whether the pool of slots can be increased up to 5 percent as proposed in view of FAA's current operating environment.

However, we believe some current slots could be reassigned to new entrants. We agree that the buying and selling of grandfather slots should be prohibited. But a carrier selling a major division should be able, if it originally purchased the slots, to recoup that cost.

We believe, until the Federal Aviation Administration can provide the necessary air space improvements, and we can put the necessary ground-side facilities in place to meet demand, restraints such as the high density rule and its resulting quotas are necessary. The FAA reports that the number of departure delays are up 41 percent at LaGuardia and 44 percent at Kennedy for the first five months of 1990, when compared to the same period last year. LaGuardia ranked first in delays in the Nation, and Kennedy ranked fourth.

We are very concerned and have retained a consultant to target the underlying causes for these delays. We feel the high density rule should not be rescinded before we have a solution to this dilemma. Extreme delays and congestion are detrimental to the region's economy and the airlines, and cannot be tolerated. If the rule is rescinded, the Port Authority will take action to prevent excessive congestion at its facilities.

While current delay statistics are bad, history suggests it could even be worse if the rule were rescinded. When the FAA implemented the high density rule to ensure "the efficient utilization of the airports involved," the number of aircraft delayed 30 minutes or more plummeted by some 67 percent in July and August of 1969, compared to the previous period in 1968.

We believe that airlines driven by marketing needs will schedule an excessive number of flights in peak periods and will not voluntarily reduce their schedules no matter how excessive delays become. Air-side congestion is a major cause and contributor to ground-side delays and inconveniences. We need the quotas to help control ground-side as well as air-side congestion.

The Port Authority supports the intent of this legislation to provide for the need of new entrant carriers. And indeed we have accommodated all carriers requesting entrances at our airports who have had slots since the Airline Deregulation Act was passed in 1978. However, in the face of delays we are experiencing, we are very concerned that the increased number of operations during peak periods, as proposed, will aggravate this problem.

There are some capacity available under the current rule at LaGuardia in the off-peak hours, and it should be remembered that at Kennedy the rule is only in effect for five hours. Certain actions must be taken to improve FAA's capabilities in the region if the quotas are to be increased. We believe the House appropriation of an extra $900,000 for training and overtime at the New York TRACON is a step in the right direction, but we also urge the FAA to attract more experienced controllers, not only to the TRACON, but also to the towers.

We have been encouraged by the demonstration project current underway at Raleigh-Durham Airport, which reduces the required spacing between parallel runways, thus allowing simultaneous approaches. Implementation of this kind of a new standard could increase capacity at Kennedy Airport by as much as 25 percent. Reduction in spacing between aircraft due to wake vortex turbulence, which is presently under study, could significantly increase LaGuardia's capacity.

Until these and other procedures can be implemented, we believe the competitive benefits provided by new entrants can be realized by reallocating a small number of existing slots from general aviation, and perhaps even commuters. The 5 percent pool equals roughly two slots per hour at LaGuardia and four at Kennedy. Clearly, these users would not be seriously disadvantaged, yet we would avoid compounding the current congestion problem.

When the Department of Transportation originally proposed the buy-sell rule, the Port Authority favored continuation of the scheduling committee process to allocate slots, and we advocated an auction for a portion of the slots as a deadline breaking mechanism, rather than buy-sell. We are troubled by a rule which allows the unrestricted selling of slots obtained without cost, the so-called grandfather slots, and without any benefits accruing to the public.

The buy-sell prohibition should not apply to situations in which an airline is seeking to sell a major division, and it originally bought the slots associated with the operation. Obviously, the slots would have to be a part of such a sale, and the carrier should be able to recoup the cost of these slots.

We also support the continuation of slot transfers as a means of rationalizing airline operational needs and suggest that the use-it-or-lose-it provisions of the existing rule be increased from the current minimum 65 percent to between 70 and 80 percent, which would provide sufficient operational flexibility, but could result in the release of under-utilized slots, and provide further opportunity for increased competition.

In closing, let me reassure the Committee that the Port Authority supports freedom of entry, but we view the high density rule as necessary to assure the efficient utilization of our scarce airport resources, both air-side and ground-side, and strongly recommend it

be allowed to continue at LaGuardia and Kennedy Airports. Elimination of buy-sell of grandfather slots should increase the availability of existing slots as the speculative motive is removed.

But further consideration should be given to auctions. Capacity improvements must accompany any increase in slot quotas if congestion and delays are to be reduced. Until it can be provided, reallocation of existing slots should be considered as a means of achieving the competitive benefits provided by the new entrants.

Thank you, Mr. Chairman.

[The statement and questions and answers follow:]

STATEMENT OF MORRIS SLOANE, DIRECTOR, AVIATION OPERATIONS & REDEVELOPMENT OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

I am Morris Sloane, Director of Operations and Redevelopment for the Aviation Department of The Port Authority of New York and New Jersey. The Port Authority is responsible for the operation of John F. Kennedy International, LaGuardia and Newark International Airports. Kennedy and LaGuardia are two of the four airports subject to the Federal Aviation Administration's High Density Traffic Airports Rule (Part 93, Subpart K) since the rule's inception in 1969. At LaGuardia, the rule is in effect from 6 A.M. to midnight and allows 48 air carrier landings or takeoffs per hour, 14 commuter operations and 6 "other" or general aviation hourly movements. At Kennedy, the rule only applies during the busy afternoon period from 3 P.M. to 8 P.M. and the allocations for each class of users varies by hour and total hourly operations range from a low of 77 movements to a high of 93 movements.

The Port Authority supports the continuation of the High Density Rule at LaGuardia and Kennedy, and while we are very supportive of new entrants, we seriously question whether the pool of slots can be increased by five percent as proposed in view of the FAA's current operating environment. However, we believe some current slots could be assigned to new entrants. We agree that the buying and selling of "grandfathered" slots should be prohibited but a carrier selling a major division should be able, if it originally purchased the associated slots, to recoup that cost.

We believe that until the Federal Aviation Administration can provide the necessary airspace improvements and we can put the necessary groundside facilities in place to meet demand, restraints, such as the High Density Rule and its resulting quotas, are necessary. When the FAA previously reviewed the necessity for the continuation of the High Density Rule in 1984 it concluded that if restrictions were withdrawn, "there may be shifting of hundreds of operations within minimum time periods. Although the air traffic system is fully capable of handling the hourly total of these operations if spread throughout each hour and the entire day, the existing carrier scheduling practices if magnified by a large increase in traffic (if all limitations were eliminated) could place unnecessary burdens on the system and could result in major air traffic delays (which have occurred even with the rule in place) and diversions to unplanned airports... Without a rule, ground delay, which could seriously impact ground facilities including gate and ramp congestion, would increase."

We believe this is truer now than it was in 1984 since the air traffic system continues to struggle partly because of the development of new hubs along the East Coast. The FAA reports that a number of departure delays are up 41 percent at LaGuardia and 44 percent at Kennedy for the first five months of 1990 when compared to the same period last year. LaGuardia ranks first in delays in the nation and Kennedy ranks fourth. We are very concerned with the increasing levels of delay despite a stagnant level of operations at our airports. We have retained a consultant to target the underlying causes for these delays and both the FAA and the Air Transport Association have joined

us in forming a Technical Steering Committee to guide the consultant's efforts. It appears some fundamental changes have occurred in the system and we feel the High Density Rule should not be rescinded before we have a solution to this dilemma. Extreme delays and congestion are detrimental to both the economy of the region and airline operations and cannot be tolerated. If the rule is rescinded the Port Authority will take actions to prevent excessive congestion at its facilities.

While current delay statistics are bad, history suggests they would be even worse if the rule were rescinded. Prior to the rule's adoption our airports received worldwide attention because of the extensive delays we were experiencing. The Port Authority acted on August 1, 1968 by instituting a minimum peak period flight fee at our airports to encourage general aviation to use smaller area airports. This helped to reduce delays but further action was needed and on June 1, 1969 the FAA implemented the High Density Rule "to insure the efficient utilization of the airports involved." The effect of the rule was dramatic; the number of aircraft delayed thirty minutes or more plummeted by some 67 percent in July and August of 1969 compared to the previous period in 1968.

We believe that airlines, driven by market needs, will schedule an excessive number of flights in peak periods and will not voluntarily reduce their schedules no matter how excessive delays become. Airside congestion is a major cause and contributor to groundside delays and inconveniences. Flow control and gateholds, quickly translate into groundside backups especially during peak periods. We need the quotas to help control groundside as well as airside congestion. This linkage between airside and groundside capacity is recognized in Subpart S of the buy/sell rule, whereby the FAA in granting international slots must take into consideration "airport terminal capacity, including facilities and personnel of the U.S. Customs Service and the U.S. Immigration and Naturalization Service."

The Port Authority supports the intent of this legislation to provide for the needs of new entrant carriers and, indeed, we have accommodated all carriers requesting entry at our airports since the Airline Deregulation Act was passed in 1978. However, in the face of the delays we are experiencing, we are very concerned that increasing the number of operations in the peak periods as proposed will aggravate this problem. There is some capacity available under the current rule at LaGuardia in the less desirable (from a marketing viewpoint) hours and it should be remembered that at Kennedy the rule is only in effect for five hours. We believe that if certain actions are taken to improve FAA's capabilities in the region that the quotas could possibly be increased. Last week the House of Representatives adopted a transportation appropriations bill which provides an extra $900,000 for training and overtime costs at the New York TRACON and includes a directive to the FAA "to establish a systematic plan to implement the New York-related recommendations of the Northeast Corridor System Safety and Efficiency Review. This plan should include specific milestones for measuring progress and benchmark for reporting to Congress on resolution of the delay problem. In addition, the committee directs the FAA to establish a focal point in FAA headquarters to oversee and expedite staffing improvements in the New York area air

traffic control facilities, w.th special attention given to improving staffing levels at the New York TRACON. The committee believes these staffing levels can be improved by increasing the number of academy graduates assigned to the TRACON, establishing a program of contract training for newly assigned controllers at the TRACON, and by scrutinizing all requests for releases from controllers presently working at the TRACON."

We believe this is a step in the right direction but we also urge the FAA to attract more experienced controllers not only to the TRACON but also to the towers. We have been encouraged by the demonstration project currently under way at Raleigh-Durham Airport which reduces the required spacing between parallel runways thus allowing simultaneous approaches. Implementation of the new standard could increase Kennedy's capacity by as much as 25 percent. Reduction in spacing between aircraft due to wake vortex turbulence could significantly increase LaGuardia's capacity.

Until these and other new procedures can be implemented, new entrants could be accommodated by reallocating the current quota allocations. The five percent new entrant pool could be created by reducing the general aviation and perhaps commuter allocations. At LaGuardia, the five percent pool equals only 2.4 movements per hour. In fact the average usage of the general aviation quota during the peak hour falls below the six movements authorized by one to two movements. Thus the pool would not severely impact current usage. At Kennedy the new entrant pool would require an average of 3.6 slots per hour. General aviation and commuters at Kennedy do use their allocated slots so creating the new entrant pool would effect current general aviation and commuter operations but this could be minimized by greater use of the "non-duty" runway for commuter operations as far as possible. Furthermore, Kennedy has not experienced significant new entrant demand thus making it unlikely that the five percent pool would be fully utilized. It is quite clear that the competitive benefits provided by new entrants can be achieved without compounding the current congestion problem and without seriously disadvantaging other users of the airport.

When the Department of Transportation proposed the buy/sell rule, the Port Authority favored the continuation of the scheduling committee process to allocate slots and we have advocated an auction as a deadlock-breaking mechanism for a portion of the slots rather than buy/sell. Auctions have the benefit of being a market-based mechanism, provide a means for new entrants to gain access and keeping the proceeds in the public realm. However, the issue was consuming an inordinate amount of time and energy so we did not object to the implementation of the Department of Transportation "buy/sell" rule provided it was for a limited period of time on an experimental basis. Unfortunately DOT has not given any indication it considers its rule temporary or experimental. We are troubled by a rule which allows the unrestricted selling of slots obtained without cost, so-called "grandfather" slots, and without any benefits accruing to the public. However, we did not support placing a transfer tax on slot sales since this would only aggravate the undesirable effects of slot sales. The buy/sell prohibition should not apply to situations in which an airline

is seeking to sell a major division and it originally bought the slots associated with the operation. Obviously, the slots would have to be a part of such a sale and the carrier should be able to recoup the cost of those slots.

We also support the continuation of slot transfers as a means of rationalizing airline operational needs and suggest that the "use it or lose it" provisions of the existing rule be increased from the current minimum 65 percent to between 70 and 80 percent which would provide sufficient operational flexibility but could result in the release of underutilized slots and provide further opportunities for increased competition.

In closing, let me reassure the Committee that the Port Authority supports freedom of entry but we view the High Density Rule as necessary to assure the efficient utilization of our scarce airport resources both airside and groundside. We believe that the FAA should have the authority to continue the High Density Rule on a case-by-case basis if it is needed for the efficient utilization of the airport. Elimination of buy/sell should increase the availability of existing slots as the speculative motive is removed but further consideration should be given to auctions. Capacity improvements must accompany any increase in the slot quotas if congestion and delays are to be reduced. Until it can be provided, reallocation of existing slots should be considered as a means of achieving the competitive benefits provided by new entrants.

Mr. Chairman, I would be pleased to try to answer any questions which the Committee may have.

THE PORT AUTHORITY OF NY & NJ

AVIATION DEPARTMENT

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July 30, 1990

The Honorable Wendell H. Ford
United States Senate
Chairman, Aviation Subcommittee
Committee on Commerce, Science
and Transportation
Washington, DC 20510

Dear Senator Ford:

First, I wish to express my appreciation for the opportunity to testify before the Senate Aviation Subcommittee on July 18 on the Airline Competition Equity Act, S. 2851.

Second, in response to your July 23 letter, in which you raised three specific questions concerning my testimony, the following information is provided:

1. **If LaGuardia and Kennedy airports are at capacity, why would lifting the High Density Rule make any difference? Air traffic control would not permit any more flights than could be accommodated, so why would an increase in flights occur? Why do you assume that eliminating slots would make delays worse?**

   If slot controls are lifted, we believe that the airlines, driven by competition and market forces, would schedule an excessive number of flights during the peak demand hours without regard for the resultant impact on airside delay levels. We are further convinced that, despite a virtual gridlock on the airfield, no single airline would yield to its competitors by unilaterally rescheduling flights to off-peak hours. Some collective agreement or form of control would become necessary. In fact, the original slot control mechanism was installed in 1969 for the very purpose of countering the airlines' practice of compressing flight schedules during peak demand periods.

2. **If this legislation becomes law, the 5 percent new entrant pool at LaGuardia would account for only 2.4 operations per hour. What impact do you believe such a change would have?**

Writer's direct dial telephone: _____

According to the classic Demand-Capacity Curve, delays rise asymptotically as demand approaches capacity. In plain language, given existing airfield, airspace and environmental constraints, LaGuardia (LGA) is apparently operating at or near its capacity. Adding even a few more flights during the peak hours would drive delays up rapidly. Over the past few years, LGA has consistently ranked at or near the top of the 22 pacing airports in recording the highest number of delays. Implementing a five percent entrance pool, in addition to existing slots, would virtually cement LGA's place at the top of the list.

We would, however, be receptive to a proposal that accommodates new entrant air carriers at the expense of existing general aviation or commuter slots. General aviation movements currently represent 7 percent of LGA total traffic. More significantly, scheduled commuter operations comprise 18 percent of total traffic, yet they carry only 2 percent of the total passengers. In the interests of enhanced competition and the efficient use of scarce, airside resources, we believe that such a plan would be worth considering.

3. **When do you anticipate the group looking into delays at the New York airports will complete its analysis?**

The consultant firm of Peat Marwick Main & Company (PMM) has been hired to conduct an investigative, delay analysis, scheduled to be completed this Fall. Charged with taking a broad view of system delays, PMM will evaluate existing delay reporting mechanisms, ATC staffing levels, airline scheduling practices, and probable causes for operating restrictions in both the terminal and enroute environs. The study has been undertaken with the cooperation of both the Federal Aviation Administration and the Air Transport Association.

As I indicated in my testimony, delays for the first five months of 1990 were up significantly when compared to the same period in 1989. What is most disconcerting is that these delays have occurred despite flattened traffic. Historically, delay levels have risen and fallen in concert with demand fluctuations. We have recently, however, been witnessing a new phenomenon in which meteoric delay increases are occurring without a corresponding rise in traffic volume. In fact, at the three airports combined, 1989 delays increased by 53 percent over 1988 levels despite a 1 percent decline in operations.

I also wish to address a question raised by Senator McCain, pursuant to my testimony, concerning slot controls at EWR. In effect, his question was: "If slot controls are needed at JFK and LGA, why are they not needed at EWR?" In response, it should be noted that EWR delays in 1989 were 10 percent less than those experienced at LGA, even though EWR handled 6 percent more traffic. Furthermore, EWR delays through the first five months of 1990 have risen by only 7 percent, whereas LGA and JFK delays have grown by 41 and 44 percent, respectively, over the same period in 1989. We therefore believe that the application of the High Density Rule at EWR is inappropriate at this time. We would support, however, the reimposition of slot controls at EWR if warranted by changing conditions of traffic and safety.

Finally, it was encouraging to hear you say that under the legislation an airport should be able to institute its own rules to control congestion, in the absence of a federal high density rule. Your endorsement of our right, as an airport proprietor, to ensure the efficient utilization of our airports by taking the necessary steps to reduce congestion and delay is welcome. Despite legal challenges, the courts have recognized our rights in this area. For example, in 1969, our right to impose a minimum flight fee was upheld in Aircraft Owners & Pilots Ass'n. v. Port Authority, 305 F. Supp. 93 (EDNY 1969). The court held that, in view of airport congestion at the Port Authority's three major airports, the imposition of the fee was justified as a means to achieve the efficient utilization of scarce resources for the benefit of the greatest number of users. More recently, in Western Airlines, Inc. v. Port Authority, 658 F. Supp. 952 (SDNY 1968), aff'd, 817 F. 2d 222 (2nd Cir. 1987), cert denied, 485 U.S. 1006 (1988), the courts upheld the validity of LGA's 1500-mile Perimeter Rule, acknowledging the inextricable link between airside and groundside capacities. The District Court ruled:

> A proprietor's interest in regulating ground congestion at its airports would appear to be at the core of the proprietor's function as airport manager, perhaps even more so than the regulation of noise; and the ability of a proprietor such as the Port Authority to allocate air traffic in its three airport system is important to the advancement of this interest.

Any legislation which would hinder the legitimate exercise of an airport proprietor's rights in the efficient operation of its airports would, in our view, be contrary to sound public policy and represent an unwise departure from well established law.

Sincerely,

Morris Sloane

Morris Sloane
Director of Aviation
Operations/Redevelopment

Senator FORD. Thank you, Mr. Sloane.

I have a couple of questions for each. And I might say in the beginning that there probably will be other questions that might arise, and they will be submitted to each of you in writing. I hope that you will respond in a timely manner so we might be able to get these additional questions and your additional input before we go to mark-up.

Mr. Aaronson, let me put my questions to you in this way. Some witnesses have suggested airports are already at capacity. What impact do you foresee if the high density rule is lifted?

Mr. AARONSON. Mr. Chairman, the high density rule relates to air space and air traffic control. And our testimony really focused on that, and the need to correct a serious mistake that was made in the years following 1968, where those critical resources were allowed to stagnate and not be expanded by the government to meet the public need. For a variety of reasons, which I can expand on, we think it is absolutely essential that we get on as a nation with fixing that problem, the air traffic control problem particularly in the case of these four high density rule airports.

The other side of the coin, of course, is the situation on the airport itself, with regard to real estate and terminal facilities and what have you. And we recognize that those things will remain a constraint on the total number of operations. So what I am saying in response to your question is that there cannot be unlimited expansion of air service as a result of removing the high density rule. The airlines will recognize the facility constraints.

In its simplest terms, the airline will schedule to the number of gates which it has access to at the airport. So we ought to eliminate this constraint on the air traffic control side of it, and let the airlines and the airports deal with the available ground facilities and make the best of those.

Senator FORD. Let me put it his way, Mr. Aaronson. In your previous life—

Mr. AARONSON. I did have one, sir.

Senator FORD. As Director of the Port Authority of New York and New Jersey, your view of the high density rule was different, I think, than it is now. Would you comment for the record on your change in perspective?

Mr. AARONSON. I would be happy to, Mr. Chairman.

I recall around four or five years ago at a time when the FAA actually issued a proposal to eliminate the high density rule and solicited public comment that the Port Authority took a position on it. And we said, in particular, that LaGuardia did not have the terminal and roadway capabilities to deal with an increased level of traffic. And for that reason we thought that the high density rule needed to be maintained. Which is essentially what Mr. Sloane has said this morning.

We also said, though, that the Port Authority had intentions and plans to expand those ground facilities, to expand the terminal, expand the roadways, interestingly, not to provide more gates, that the number of gates at LaGuardia would remain fixed. Which, by the way, is essentially the plan for Washington National as well, to upgrade the facilities, but keep the number of gates the same. And therefore, basically keep the number of flights in the same range.

So we said that when those programs at LaGuardia were completed so that we would be able to handle more passengers in a given period of time on the roadways and flowing through the terminals and claiming their bags, that we would be amenable to taking a fresh look at what the traffic levels were that LaGuardia could accommodate.

Now the Port Authority is making good progress on expanding LaGuardia. It is a very dynamic and exciting program. And I believe that by the time the 18-month period would run on this bill, those new facilities will have come on line. So I do not see any real inconsistency in a position which I advocated in one role, and the one which I am advocating today with regard to LaGuardia Airport.

Senator FORD. Mr. Hoeksema, let me ask you a couple of questions. Do you believe that slot controls act as a disincentive to capacity expansion at these four airports?

Mr. HOEKSEMA. From our perspective, it has been an absolute block in terms of expansion at those airports. As I indicated in my testimony, we have tried for a number of years to gain slots, and have been absolutely unable to in any way. So they have been an absolute block for us to provide service at these airports.

Senator FORD. Opponents of this legislation have stated that there is no purpose in adding new carriers to a market if we also drive incumbent carriers away. Do you believe this is a likely outcome?

Mr. HOEKSEMA. I do not think that is likely at all. As I indicated, I think this legislation—first of all, when I think back to the early days of deregulation, and I am prejudiced when it comes to Midwest Express of course, but I really think that we are the type of carrier that was envisioned in terms of bringing competition and bringing improved service. I think this legislation would provide for carries like Midwest Express to expand service and enhance competition to these airports, and would not in fact drive other carriers out.

The 5 percent that is proposed in this legislation, in terms of additional slots for new carriers, it is my opinion that 5 percent would not even be fully utilized because of the limited number of carriers. And in terms of current carriers with all the slots that they have, based on the 65 percent rule, I suspect there has been some hoarding. And if there is no incentive to hold on to a valuable asset, slots, you may see some actual reduction in service.

Senator FORD. Mr. Cozzi, your statement supports the buy-sell rule as I understand it, and states, and I quote from your statement, "neither the Agency," referring to DOT, "nor the Congress, until now, has taken steps to stop the sale of slots."

Well, let me just say to you, the Senate took steps in 1986. The vote was 82 to 14 to overturn the buy-sell rule. We have directed that the DOT, on two occasions since, to rethink the rule. At any rate, I wonder how you can justify a market solution when the market is physically closed to new entrants?

Mr. COZZI. The Trump Shuttle is clearly in itself a new entrant. We are a new airline. Granted, we bought assets of Eastern Airlines. But we are, for all intents and purposes, a new entrant into the marketplace. We paid for our slots. We paid multimillion dol-

lars for our slots. We are proposing that in the event that someone were to purchase all or part of the Trump Shuttle, that we be able to regain the expenditures that we had in purchasing those slots originally.

Senator FORD. Well, Mr. Cozzi, I might say that you bought existing slots. You did not buy anything new and you did not expand, so therefore you just bought the existing slots that were available from an airline that wanted to get rid of their shuttle and needed money. So there was no new entrant as such, you just changed the name of the Eastern Shuttle to the Trump Shuttle, did you not? With different management and that sort of thing. Of course you all are going to tell us you are much better than Eastern. I understand that.

But, basically, there was no change as far as slots were concerned in the Trump and the Eastern Shuttle?

Mr. COZZI. That is correct.

Senator FORD. You mentioned that airports such as National and LaGuardia are limited by ground space and cannot accommodate massive increases in air traffic. Is not the ground capacity factored in to the FAA flow control system when capacity for a particular airport is calculated?

Mr. COZZI. Yes, it is. However, there are situations where you will have departures delayed, but arrivals will still be possible and aircraft have to push off gates to meet or commit to have gates available for arriving aircraft. I propose that if the high density rule is removed, that we will increase air traffic, it will lead to additional ground congestion, at especially LaGuardia and Washington National where the amount of space that is available on the ground in the form of taxiways and available space constraint within the geography of those fields is going to cause great delays at those airports. In fact, you just have to look at a bad weather night at LaGuardia and Washington National and you will see that today.

Senator FORD. Does not this legislation give the opportunity for the airports themselves to take over in lieu of the Federal Government's legislation? The airports can take over and set their own schedule. Is that not right? I think even though we might remove the buy/sell or the particular legislation that we now think is hampering expansion, that the local airports still have the authority.

Mr. Mathias, I recognize that your carrier has a substantial investment in, of course, the shuttle operation, and you mentioned earlier that it was for sale, but that was to provide money for expansion of Pan Am in other areas, not only national but international. What portion of your financial statement do you factor in for slots? When you put your assets and liabilities out there, how much of your financial statement includes the value of the slots?

Mr. MATHIAS. I do not know how the financial statements are written in terms of showing or including slots as values on the balance sheet. I can supply that for you.

I do know that when we started the shuttle, among the other investments we made besides building a terminal, arranging for leasing of aircraft and hiring people and training them, we paid over $70 million for the slots in order to get started quickly, on time, at the hours we needed.

[The following information was subsequently received for the record:]

As of the end of 1989, the costs of slots allocated to the Pan Am Shuttle are included in the $96,000,000 listed under Deferred Charges and Other Assets in the balance sheet of Pan Am Corporation.

Senator FORD. Existing slots, you did not acquire any new slots?

Mr. MATHIAS. Well they were new to us. We acquired slots that were owned by existing carriers, absolutely.

Senator FORD. Mr. Cozzi and you both have talked about that you can set your watch by the time we leave. That is a pretty good advertisement. That does not mean you are going to get off the ground. That means when you get away from the gate, maybe. It is mandatory for your well-being and economic future that you continue the way you are, yet there are other markets where hourly service is provided between major markets without any sort of high density rule.

For example, Los Angeles and San Francisco, that is one. Why do you believe that shuttle operations in the Northeast corridor could not be handled under normal flight flow procedures?

Mr. MATHIAS. Partly for the same reasons that Mr. Shane described. While I am not that familiar with exactly the operations between Los Angeles and San Francisco, I am aware that both of those airports have substantially more capacity for these types of hourly operations than do LaGuardia and Washington National. What we see is the probability that what Mr. Shane says is true, that unlike what the ATA hopes for, the Air Traffic Control System and the FAA administration of it are not going to improve dramatically, even within 18 months, that there is going to be flow control of the type we now experience with thunderstorms almost every day, that aircraft are not going to be allowed to fly around in the sky on holding patterns in order to maintain safety, and therefore, they will be held on the ground at the point of origination.

There will be substantial delays on an everyday basis. There will be uncertainty as to which schedules will be able to operate on time. What we are looking for, if you are willing to take that risk,—we are, but we would like to limit the risk with respect to our services which need to operate on an on-time, hourly basis. And we are looking for something in the legislation that will provide assurance to us that in the course of the future, whether it is regulated or unregulated, whether it is flow control or the local airports imposing their own individual restraints, that the shuttles be given some priority so that they can operate on an on-time basis.

Senator FORD. Mr. Sloane, you said there had been a 41 percent increase in delays. What was the period?

Mr. SLOANE. The first five months of this year versus the same period of last year.

Senator FORD. They are up 41 percent?

Mr. SLOANE. Yes, 44 percent at Kennedy Airport.

Senator FORD. But an average of 41 percent. What is the major problem? Has it been weather? Has it been the inability of the air traffic controllers to bring it in, lack of capacity on the ground? What increased the 41 percent in 12 short months?

Mr. SLOANE. I wish I could tell you the answer. That is why we have hired a consultant to try to find out what is causing that.

Senator FORD. That is the reason my brother-in-law is a specialist. He is an MD.

Mr. SLOANE. It is probably a portion of all of the items that you mentioned, some weather delay, I think a lack of experienced controllers in the New York area. I think a lack of total controllers in the New York area. A whole series of things caused those delays, but until you can find out what it is and the problem is corrected, we cannot see why you should eliminate the high density rule.

I was a general manager at Kennedy back in 1968 when we had the most horrendous congestion in the skies that I think any airport in the world has ever had, and that was one of the reasons that the high density rule was put into effect in 1969. I think I mentioned to you that the delays were reduced by about two-thirds in the following year with the high density rule.

I do not think flow control is the answer. That is not service to passengers, and it is not service to the airlines. What you are doing is you are holding aircraft on gates at the originating airport, causing gridlock there. Aircraft are arriving and cannot get to those gates. People are waiting at the airports longer than they normally do. The terminal buildings, the parking lots, the roadways, the gate hold areas, the airports were never designed for that kind of build-up of people caused by flow control.

Senator FORD. Well, as I understood your statement, Mr. Sloane, that if this legislation is passed in its present form, you plan to impose your own plan, which this legislation allows you to do.

Mr. SLOANE. We would have to do that, yes sir. But I think a national regulation, the way you have today, the high density rule, is a better way of handling it.

Senator FORD. We would just as soon you handle it as us, you know. You cannot blame us. We can let you take some of the blame for what happens locally. It all comes back here. You do not want us to change, but if we do offer legislation, then you are going to impose your own rule. We would like for you to have a little freedom to do what you think is best and in your own interest for a change.

Mr. SLOANE. But we have no control over the number of controllers that the FAA has, how they control their system, how the air side is controlled——

Senator FORD. But Mr. Sloane, you know basically how many is there and what the problems are, and what might be, and therefore if it is good today and you want to keep it, could you not just develop your own plan based on that? That would not make any difference in your plan and ours.

Mr. SLOANE. If the high density rule were eliminated, we would have to look very seriously to imposing our own regulations.

Senator FORD. You would have your own high density rule.

Mr. SLOANE. Yes, sir.

Senator FORD. Now, did I understand Mr. Aaronson to say that you are in a major capital expansion to eliminate some of the supposedly ground-side shortages you have?

Mr. SLOANE. Yes, we are. We are expending several billion dollars at our three airports to do that. The LaGuardia program, as

Mr. Aaronson mentioned, is well underway. In the next three years, most of that will have been completed. At Kennedy, it will probably take five or six years for that to be done. But until that is completed and until the FAA increases capacity in the air terminal system, we see no way of increasing the number of slots we have at our airport.

And by the way, in the New York area we have a benefit that many of the other regions do not have. We have a third major airport, Newark Airport which has no high density rule at the present time, and where any new carrier, if he wants to, can come in, and where we have encouraged them to come in, and where the time to Manhattan is not much greater than it is from LaGuardia and a lot less, probably, than it is from Kennedy. So we have the advantage of new entrants being able to go in the Newark Airport with the same accessibility that they would have from LaGuardia or Kennedy, to the New York/New Jersey metropolitan area.

Senator FORD. Thank you very much. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I will follow that up Mr. Sloane. Why do you not need a high density rule at Newark? You have got the same airspace being used by aircraft.

Mr. SLOANE. We had one at one time, and we found that it was not necessary, and until problems increased to the same extent as they have at LaGuardia and Kennedy, we are not looking to put something in that is not necessary.

Senator MCCAIN. But Mr. Sloane, the airspace is the same airspace that is being used by planes that land at the three airports, and obviously, you do not have the need for a high density rule at Newark, but you seem to feel that it is of utmost importance at Kennedy and LaGuardia.

Mr. SLOANE. We do because we have not experienced the same kind of delays, both on airport and in the airspace for whatever reason. We have been working with the FAA to try to resolve the problems over a long period of time, and it has not been resolved.

Senator MCCAIN. Mr. Sloane, if my memory serves me correctly, and maybe Mr. Aaronson can corroborate this, that for a considerable period of time, the delays at Newark were higher than at LaGuardia and Kennedy.

Mr. SLOANE. They were for some period of time.

Senator MCCAIN. And they had no high density rule.

Mr. SLOANE. That is correct, we did not have the on-airport problems we have at the other two airports. That is the newest of the three New York airports. In working with the FAA and the new East Coast rule, which has caused other noise problems, as you know, some of those delays have been reduced.

Senator MCCAIN. But the delays are still comparable between the three airports.

Mr. SLOANE. My understanding is Newark has less delays in total than the other two.

Senator MCCAIN. Thank you. Mr. Hoeksema, in your statement, you say slots simply have not been available to us for purchase despite our repeatedly surveying airlines for the availability of slots. Does your search apply to Kennedy and LaGuardia airports as well?

Mr. HOEKSEMA. It does to LaGuardia but not to Kennedy, that is correct.

Senator MCCAIN. And yet, Mr. Sloane in his statement says the Port Authority supports the intent of this legislation to provide for the needs of new entrance carriers, and that they have accommodated all carriers requesting entry at their airport since the Airline Deregulation Act was passed in 1978. How do you explain that, Mr. Hoeksema?

Mr. HOEKSEMA. I think he said once they get slots. And once we got slots we had—I believe he said once they got slots.

Senator MCCAIN. Once they get slots?

Mr. SLOANE. That is correct.

Senator MCCAIN. That clears that one up.

Mr. HOEKSEMA. Senator McCain, could I just comment on a follow-up on the Newark question just for additional information? Our own experience, we operate right now three flights at LaGuardia a day, and three flights at Newark a day. The second quarter of this year, our on-time performance at LaGuardia versus Newark were virtually identical. One was 79.6 percent, the other was 79.7 percent.

Senator MCCAIN. Well, I did not want to get into a debate on that issue, but I think the evidence is clear that the delays are very comparable between the three airports, and at one time at Newark, they were simply higher. In fact, Newark had the unenviable reputation of being the worst airport in America by objective criteria. But it is interesting to me that the high density rule is of absolute criticality at two airports, but at the third airport in the exact same area, exact same airspace, exact same air controllers, it is not necessary. But I guess we could fill up the record with various opinions on that. But, I think your experience has been there is very little difference. Is that true?

Mr. HOEKSEMA. Absolutely.

Senator MCCAIN. As an operator into both airports?

Mr. HOEKSEMA. That is correct.

Senator MCCAIN. Mr. Aaronson, is it the prevailing wisdom today that it is impossible for an entrepreneur in America to start an airline successfully? Would you say that history indicates that?

Mr. AARONSON. Senator McCain, I think it would be an overstatement to say impossible, but it certainly is very difficult, particularly if it was the intent of the entrepreneur to start a broad-gauged airline, as opposed to a niche carrier that had a very special mission. There are many reasons for it, and I know you are very familiar with them.

Senator MCCAIN. Yet, at the last hearing we had, Mr. Shane, I believe, testified that in his view, unless an airline was ""international in nature, its chances of survival were minimal." So, now on one side it is almost impossible for a new entrant to enter, and at the same time, we see a shrinking in the number of existing airlines. If it is your view that it is highly unlikely that an airline could enter the airline business, do you think that is in keeping with the intent of the Airline Deregulation Act?

Mr. AARONSON. No, I really do not. But we believe the major reason that it is as difficult as it is to successfully enter the business has to do with the lack of air traffic control, and in some cases

airport facilities, around the country. As Secretary Skinner himself has emphasized, the single greatest way to foster a competitive airline industry is to overcome the serious shortfall of infrastructure.

Senator McCAIN. I think the Chairman already asked this question, but I would appreciate it if you would repeat the answer. The Department of Transportation contends, as do other witnesses, that the repeal of the slot rule would result in increased delays, more noise, and no increased access. What is your response to that?

Mr. AARONSON. I think that in the short term, it probably would result in some increased delays. It is a judgment question as to whether that is a considerable amount and whether the impact on the traveling public would be a significant problem.

What I said earlier was characterized as being somewhat on the optimistic side, and I think that is a fair characterization. We are optimistic that, given the sophisticated capabilities which flow control has, which absolutely did not exist at the time the high density rule was created for the five airports in 1968, and given the recognition by the carriers that I was talking about a little earlier of the ground side constraints that the airlines have to schedule to that—it is not just the gates. It is also things like penalty box areas, if they have to push off the gate, how much space is there—that the pressure on the system will not be unlimited. The carriers will make judgments about what can and cannot be accommodated.

But in the short term, it probably would result in more delay. Over time, I think it certainly would work itself out. And I think Mr. Hoeksema's point is also an interesting one, that perhaps there would be some schedules that would be taken out of the system.

So if we do not try, we are never going to know. And there is a bit of a chicken and egg problem here, but it is our view that, as a nation, as transportation providers, we have got to get out of the box that we are in. To just give the FAA no incentive to solve the air traffic control equation in these four busy areas is an invitation to far more problems than any other approach we might take.

Senator McCAIN. Mr. Hoeksema, you said that you had not been able to bid on slots at these four airports in your testimony. Yet airlines have allowed other people, other airlines, to bid. Is that true?

Mr. HOEKSEMA. We have tried for several years to—we have called airlines, all the airlines that have slots. Many times there are phone calls that are not returned. But we are looking for several slots. We do not have facilities at many, many airports around the country that airlines use their slots to trade for something that they want at another airport. And we just are not in that position——

Senator McCAIN. So you just have been precluded from bidding even?

Mr. HOEKSEMA. That is absolutely correct.

Senator McCAIN. So not only are the airlines who control these slots not required to put them up for a bid, but they can be selective in who they allow to bid on them?

Mr. HOEKSEMA. Yes, sir.

Senator McCAIN. Is that fair, Mr. Aaronson?

Mr. AARONSON. Senator, I think it is not for me to say whether it is fair or not. Individual airlines have to make their own business

decisions and the government has to decide what kinds of rules are fair.

Senator McCain. The slots are government owned, is that right? They are given to the airlines, but they are basically the government's. Is that right? The American people's?

Mr. Aaronson. I believe that. The buy/sell system has been used as a system for transferring. It does not really get so much to the ownership question.

Senator McCain. Mr. Cozzi and Mr. Mathias, I stand by my statement before. I understand you both face very unique problems. And I want to do what I said before and that is to try to accommodate the unique situations which exist with the shuttle and the unique service you provide. I do not know exactly what that is. I look forward to working with you to try and address that issue.

Finally, if I could just comment, Mr. Chairman, I thank you for your indulgence in holding this hearing. From this hearing I get the impression from the Administration that the status quo is satisfactory, yet I get the impression from witnesses that the status quo is not satisfactory. I think that we have relied on, as my friend from Wisconsin has said, for some 21 months, some kind of meaningful rule making and we have not gotten anything.

Mr. Shane, who was an articulate and intelligent witness, stated that the Secretary continues to think about this problem, and I am gratified to know that. But it seems to me that some action is required if we are going to allow the free enterprise system to function as we seek, and, most importantly, to allow Americans to travel from one place to another at the lowest possible cost. And that can only be achieved through competition.

I thank all the witnesses and I thank you, Mr. Chairman.

Senator Ford. Thank you. Senator Kasten.

Senator Kasten. Mr. Chairman, thank you. I just want to follow up a little bit.

The Senator from Arizona asked a couple of the questions I had intended to ask of Mr. Hoeksema. But I want to take this buying and selling of slots one step further.

If I understand your experience, a slot is not up for public auction. A slot transaction is a private transaction and a slot may be available for sale to one buyer and not available for sale to another buyer. Is that correct?

Mr. Hoeksema. That is correct.

Senator Kasten. And there are no rules or regulations with regard to how that transaction takes place. You could call up on the phone and say, "do you, XYZ airline have slots available?" They could say, no we do not. And at exactly that same time, they could be negotiating with someone else for the slot they just said was not available to you?

Mr. Hoeksema. Yes, sir.

Senator Kasten. It seems to me, if that is the case, in effect, what that sets up is XYZ airline deciding who its competitor will be. Am I right?

Mr. Hoeksema. Absolutely, and that is one thing I said in my testimony.

Senator KASTEN. XYZ could decide they would like to compete with A, but XYZ can decide that they do not want to compete with B. Therefore, they can decide who their competitor will be.

Mr. HOEKSEMA. That is correct.

Senator KASTEN. It seems to me that that is bad public policy particularly with regard to deregulation. Mr. Aaronson, you made some comments earlier about deregulation. Does this make sense to you? Does this fit the spirit of deregulation, if, in fact, people are able to decide who their competitor will be?

Mr. AARONSON. Senator, I would say if there are actual abuses in that area that it would not be in the spirit of deregulation. I am not prepared to offer an opinion as to whether there have been abuses or not.

Senator KASTEN. Mr. Hoeksema, have there, in your opinion, been abuses?

Mr. HOEKSEMA. There have certainly been frustrations, from our point of view, in not being able to even get to the point of meaningfully—with the exception, as I pointed out, of the last two weeks—without being able to get to the point of meaningfully discussing even a price on slots with other carriers.

Senator KASTEN. I just have one other point that I want to make with you, Mr. Hoeksema. I do not know if you were here when Mr. Shane was here. In his prepared testimony he talked about the ability of a carrier to artificially, if you will, increase the percentage utilization at one particular time. And that is the first time, I believe, that the Department of Transportation has officially recognized this practice. Could you explain to us how often or how frequent this practice is, of when people see themselves getting down below that threshold, they kick it up so they just meet that threshold? Is this something that happens often, or is this something that happens seldom?

Mr. HOEKSEMA. I guess I do not have sufficient data to know for sure when it is happening and how often it is happening. But with a 65 percent use requirement, it certainly can happen. And you hear talk that it does happen. And, again, this was the first time I had heard DOT acknowledge that it happens. My contention is that there is capacity at those airports which is not being used, and it may actually reduce the operations if buy/sell goes by the wayside because people would not try to covet and hold these assets that have artificial value on them.

Senator KASTEN. If we increase that utilization percentage to 75 or 85 or even 95 percent, that would make it relatively more costly for the carrier to keep that slot. Would that make sense as public policy?

Mr. HOEKSEMA. In terms of public policy, I think 65 percent utilization is certainly too low, and there are people like us who would like to utilize slots at an 85 percent level or more that are precluded from doing that now because other carriers may be sitting on slots that have a low utilization. So I think that 65 percent utilization is not good public policy.

Senator KASTEN. Thank you, Mr. Chairman.

Senator FORD. Let me ask just a couple of questions.

Mr. Cozzi, I asked Mr. Mathias, and he can be forgiven because he is public relations or governmental affairs vice-president. But

you are president of the Trump Shuttle. What portion of the value of the slots do you carry in your financial statement?

Mr. COZZI. We purchased 92 slots for the Shuttle operation and they are valued in excess of $70 million.

Senator FORD. And you carry those at what value, now, $70 million? Or have you depreciated them?

Mr. COZZI. No.

Senator FORD. You have got 91 slots?

Mr. COZZI. 92.

Senator FORD. For $70 million?

Mr. COZZI. That is correct.

Senator FORD. So from what I have heard here today, you are about $22 million short. You have got more money that you thought you had. Maybe Donald can use that.

One other thing I want to ask—and I see my good friend Senator Exon is back to ask his questions. If we pass the bill today, there are certain airlines that have leases on slots. They are not sold, but they are leased. And I think, Mr. Aaronson, you alluded to that in your testimony. It seems unfair, at least to this Senator, that if this bill is passed today and the lease expires in three or four months, that the long-term arrangement financially, or picture financially might be disrupted. Would it be good, bad or indifferent, if we allow those who have the leases to go ahead and extend it through that 18-month period after the legislation was passed, if passed?

Mr. AARONSON. Mr. Chairman, we would like to see it extended throughout the 18-month period as part of maintaining a workable system for trading slots back and forth and being able to respond to the needs of the traveling public in a flexible way. At the very least, though, we would ask that the Committee not abrogate existing slot leases that might expire before the 18 months. We are operating on the assumption that the Committee's intent is to eliminate the whole system after 18 months.

Senator FORD. I say to you, Mr. Aaronson, I am very much opposed to any abrogation of contracts by the Federal Government.

Any other witnesses have any objections to that procedure Mr. Aaronson just outlined?

[No response.]

Senator FORD. Apparently not. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. I have listened with great interest, and want the panel to know that I am a co-sponsor of the legislation. We are delighted to have you here this morning to air your concerns and I recognize that there are some concerns. I think the legislation was drafted addressing some of the concerns. We will take a look at it further as we move along.

We are going to have to do something in this particular area. I understood you to say, Mr. Cozzi, that part of the financial structure of Trump airlines, of course—I think you referred to it as assets, if I heard you correctly—are the slots. Is that a major portion of your asset? 10 percent? 20 percent? What percentage of your assets of Trump are tied up in purchases that you have made of slots?

Mr. COZZI. Well, as you know the Shuttle was purchased for $365 million. As I have already mentioned, $70 million of that was in slots. $90 million is today allocated to equipment, that is, flight

equipment. There are ground holds, ground leases, and terminals and gates and various other things. I do not recall what the exact breakdown is, but certainly it is a very substantial portion of our asset value, yes.

Senator EXON. I think that is something, of course, we have to take into consideration. One of the members of the panel mentioned that with regard to some previous testimony before this Subcommittee and we have to take that into consideration. I was very much concerned about this proposition of identifying slots as owned by aircraft companies, which I thought was a mistake in the first place. But after the fact, it has been done.

With regard to slots, I am not sure, it was either Pan American or Trump, but I believe I heard on radio advertising recently, one of the companies—it may have been one of you—that said, "Do not worry. We have got a shuttle service to New York City every hour on the hour, and if that airplane is full we have got another one." Which means to say that if the airplane is full, and I am there, they will roll out another airplane and they will take me to New York. The question came up in my mind, if slots are as closely controlled as we think they are, how is that possible?

Mr. MATHIAS. It was brought out earlier in the hearing, Senator, that extra sections, which is the second aircraft, are outside the slot control system. You can operate as many extra sections as you want without having a slot to do so. The first flight, the scheduled flight, has to have a slot. The flight that would either operate on the half hour, such as Pan Am's, or on the hour, as Trump's, has to have a scheduled slot. If there are an excess number of passengers for that first plane, we bring out another plane. That plane does not have to have a slot in order to operate.

Senator EXON. Then are you telling me that if you have a slot for 11:00, you could have that leave and you could have another one leave at 11:15, another leave at 11:30, and another one leave at 11:45, under the present arrangement?

Mr. MATHIAS. Under the rules, it is supposed to be a legitimate extra section, and that is, it is only operated if and when there are excess passengers for the scheduled flight.

Mr. COZZI. That is correct.

Mr. MATHIAS. In practice, that is the way it is done.

Senator EXON. If these slots are as tight as we are led to believe they are, that you cannot get anymore airplanes coming in and out of a place, and if the parking space is so limited at National, for example, which you know it is, I do not know where all these extra airplanes come from or where they are parked, ready to take off instantaneously. If you have got one extra passenger on a full plane, I would suggest, Mr. Chairman, that is something maybe we ought to have staff look into a little bit more, because if these slots are as tight as they seem to be, every time we want to have entry of one more flight, only one more flight into Washington National from someplace, it is almost impossible.

Then on the other hand, it seems that if a slot is full, you can back that up with a second, or third, or fourth aircraft, it does not count. I am not sure—as a layman, I do not quite understand that. Can you explain it to me?

Mr. MATHIAS. Well, I think Senator, nobody at this table is arguing or claiming that there is not room for some expansion of the operations at any of these slot-controlled airports, and I do not think anybody here is opposed to the new entrant provisions of this rule that require an increase of up to five percent in the operations in order to make room for new entrants. We certainly are not.

Senator EXON. Do you have any idea of the very difficult proposition that we have had in trying to get slots for several companies, including America West, into Washington National? Not even one slot. The only reason we finally got a slot was the problem with Eastern. When Eastern quit flying, some slots showed up and we got one. I believe, Mr. Sloane, that America West is still prevented from flying from certain locations into LaGuardia today. Is that correct?

Mr. SLOANE. If they do have slots—We can provide them with land facilities. But, if they do not have slots, they cannot fly in.

[The following information was subsequently received for the record:]

Nonstop flights to and from LaGuardia are restricted to points that are located within 1,500 statute miles of LaGuardia and to and from Denver. It is therefore correct that America West, like all other airlines, is prevented from flying nonstop from certain locations into LaGuardia which include America West's hubs at Las Vegas and Phoenix. The validity of the LaGuardia Perimeter Rule has been upheld by the courts.

Senator EXON. Then as an operator, how do you justify the question I was just asking about how come we can have a second or a third airplane that does not count if slots are as tight as you say they are in LaGuardia? Do you have that arrangement in LaGuardia?

Mr. SLOANE. Excuse me.

Senator EXON. Do you have that arrangement in LaGuardia that if a shuttle is full, a second airplane or a third airplane can take off and it does not count?

Mr. SLOANE. Senator, that is not our arrangement. That is an arrangement that they have with the FAA on the allocation of slots, and I do not think there are that many extra sections a day that would allow you to give the kind of increases that you are basically talking about.

Senator EXON. Is that advertising that is being run here in Washington false advertising?

Mr. SLOANE. I cannot answer that question.

Mr. MATHIAS. I can answer it. It is not false.

Mr. COZZI. It is not false advertising.

Mr. MATHIAS. We do operate an extra section when there is excess traffic, and we do it, probably every day, except weekends, on certain flights at certain hours.

Senator EXON. I recognize that many people feel that transportation between Washington National and LaGuardia is the most fundamental place in the whole-wide world, but there are some other people that need, and are entitled, to at least get into their nation's capital.

What I am trying to point out is that slots are so tight, and especially at the two airports we have mentioned, that for the life of me I do not understand why we are having so much trouble. Maybe

the problem is not so much with you, the airlines, as it is with the FAA. Is that what you are telling me?

Mr. MATHIAS. Yes, that is right. We are saying that there is an opportunity to create some more slots, and that they could be allocated to new entrants, and it would take care of their ambitions. We are also saying, at least Pan Am is saying, that we have a going business that we want to transfer, but you have got two different dates for the transfer of slots and the termination of slots. You have got 18 months during which you still have the slot system, but we cannot transfer the slots, so we cannot transfer the business for the next 18 months. That is the box we are in.

Senator FORD. That is easy to correct.

Senator EXON. Gentlemen, thank you very much. I still think this is somewhat of a problem, but at least you helped us some in our deliberations. But, thank you, and thank you, Mr. Chairman.

Senator FORD. I might say there may be additional questions and we will submit those to you in writing and ask you to respond as promptly as possible. This hearing is adjourned.

[Whereupon, at 12:21 o'clock, p.m., the Subcommittee recessed.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of Hon. C. Thomas McMillen, U.S. Representative From Maryland

I would like to take this opportunity to comment on S. 2851, a bill that would remove restrictions on the number of flights per hour allowed into four major airports across the country including Kennedy and La Guardia Airports in New York City, Chicago's O'Hare Airport, and National Airport. Sponsors of this legislation state that their intent is to lower consumer costs through increased market competition. While no one disputes the merit of decreasing consumer costs, this bill would have negative repercussions for outweighing this benefit.

Flight limits on scheduled passenger jets were first imposed by the Federal Aviation Administration (FAA) in 1969 to prevent flight delays and to improve safety. The FAA divided landing rights among the airlines using each airport and allowed for carriers to buy and sell these rights. In 1987 limitations on day flights into National Airport were included in an agreement that transferred control of the airport to the Metropolitan Washington Airports Authority from the FAA.

There were a number of good reasons for the original imposition of flight restrictions that are still very much valid today. First and foremost, any increase in the already substantial number of flights into National, or any of the other three airports mentioned, would greatly increase safety risks. An airport facility can only handle a prescribed number of flights without incurring unnecessary risk. To allow unlimited daytime flights would be the equivalent of placing economic gains ahead of passengers security. I believe that given the choice, individuals would take safety over a slight decrease in travel expenses. If we are looking out for the consumers "best interest," than that includes their safety as well.

The second reason for flight restrictions is to avoid lengthy delays for travelers. Increasing flights only to force passengers to wait longer to reach their destinations benefits no one. And again, while supports of this legislation rally behind decreased consumer costs, the question is-at what price?

Finally, there is the issue of noise. While flight limitations were not originally envisioned as a means for controlling air traffic noise, they have become an important mechanism for achieving this end. It is imperative that we work to keep some sort of balance between the rights of those who fly and the rights of those who are adversely affected by air traffic noise. To open up a free for all by lifting flight restriction would dramatically shift the delicate balance many of us have have worked to sustain. Currently 37 flights per hour are allowed into National Airport. For families living near this airport any increase in this number would be considered intolerable.

I trust that before this bill progresses any further serious thought is given to these issues. While we would all like to find a means for lowering consumer costs-this bill is not the answer.

Statement of the American Association of Airport Executives and the Airport Operators Council International

On behalf of the American Association of Airport Executives (AAAE) and the Airport Operators Council International (AOCI), we submit the following statement on S. 2851, a bill "to alter the Federal rules applicable to commercial air carriers at high-density traffic airports." Founded in 1928, AAAE is the largest not-for-profit professional organization representing the men and women who manage our nation's airports. AOCI represents the local, regional and state governing bodies that own and operate the principal airport served by scheduled air carriers in the United States and throughout the world. AOCI's member airports enplane more than 90 percent of the total domestic and virtually all international scheduled airline passenger and cargo traffic in the United States.

AAAE and AOCI support the thrust of S. 2851. Government policies, such as slot controls, which restrict entry to airport facilities and can inhibit competition should

be regularly reviewed and eliminated wherever possible. The facts, as recently found by the General Accounting Office (GAO), merit such a review.

They are: "airport takeoff and landing "slots" which are needed to gain entry at the four airports covered by FAAA's high-density rule have not been readily available for new entrants;" and "flights at airports wher entry was limited by slot controls had, on average, about 7 percent higher air fares."

We are in strong support of the bill's purpose to recapture slots as public assets and eliminate the private property rights of airlines in slots. Since April 1986, airlines operating at four high-density airports (Washington National, New York La Guardia and Kennedy and Chicago O'Hare) have been able to treat airport takeoff and landing rights (slots) as private assets.

When the Department of Transportation (DOT) proposed the "buy-sell" rule in 1984, AAAE and AOCI questioned the rationale for allowing private airlines which had obtained federal authorized landing slots at no cost, the right to subsequently sell these slots to other airlines at large profit, without any requirement that the financial gain go toward the improvement and expansion of the air transportation system. DOT's response was that this rule was a marketbased approach to allocating landing rights that was consistent with the concept of airline deregulation and would enhance competition at these airports. Instead of being a cure, however, the whole concept of slot sales has become in itself a barrier to competition.

As this committee knows, airline deregulation was based upon open entry into the airline business. New entrants and potential new entrants, rather than government regulators, would police the price and service of incumbents. Due to FAA's air traffic control constraints, however, the four high-density airports are closed markets. The fact that the market is closed means, by definition, that someone will regulate entry. The choice then is between incumbent carriers regulating entry or the government regulating entry.

Theory aside, four year later we know from experience that the practical effects of the buy-sell rule have been to create a serious obstacle to new entrants or growing incumbents seeking access to these airports. New entrants have at times paid milions of dollars to incumbents for slots for which those incumbents paid nothing. This obviously places the new entrant at a severe competitive disadvantage. In other cases, new entrants have been unable to purchase a slot at any price—they are simply "not for sale."

Indeed, as GAO found in its recent barriers-to-entry study, "the slot market has increasingly become a short-term leasing market, in which major carriers that have accumulated excess slots lease out rather than sell the ones they do not need." And perhaps most noteworthy was GAO's conclusion that "not a single independent carrier has been able to establish new service at a slot-controlled airport by using slots bought on the free market."

As in 1984, AAAE and AOCI remain strongly opposed to the Federal policy that allows the allocation of slots to be regulated by incumbent airlines. S. 2851 would ensure that slots are reclaimed and held in the public domain, where they belong.

Second, AAAE and AOCI support the bill's call for a review and justification of the practice of using slots to control access to the high-density airports. Since 1969, when the Federal Aviation Administration's (FAA) high-density rule went into effect, the number of landing and takeoffs that could occur each day at these airports has been restricted. While AAAE and AOCI do not have a position on the issue of immediately increasing slots at the high-density airports to provide a new entrant pool, we do believe it is important to recognize that the rule has helped to mitigate congestion and noise at these ariports. Therefore, before repealing the high-density rule or increasing the slots pool, the committee should carefully weigh the competing interests involved—local public acceptance of airport operations under the current limitations versus the desire for new competition to police prices and service options for the traveling public. In the case of Washington National Airport, Congress has already reviewed the competing intertests and codified its determinations in the Metropolitan Washington Airport Act of 1986. Consideration should be given to the special circumstances involving Washington National Airport as addressed in the 1986 act.

Finally, we support the FAA's authority to continue the high-density rule on a case-by-case basis, if needed for safety or to enchance airport efficiency. We appreciate the opportunity to comment on this important legislative proposal. Thank you.

STATEMENT OF

AMERICA WEST AIRLINES, INC.

America West Airlines, Inc. (America West), a post-deregulation airline that began operations a little over six years ago, is pleased to submit this statement in strong support of S. 2851, the Airline Competition Equity Act of 1990. The Subcommittee is to be commended for promptly conducting these hearings on this bill that is sponsored by many members of this Committee, and we very much appreciate the opportunity to provide these comments on the problems of access by new entrants at the high density airports.

Background of America West Airlines, Inc.

By way of background, America West is one of the two remaining post-deregulation carriers. We began operations as a new entrant airline in August 1983 with three Boeing 737-200

aircraft operating to and from our Phoenix hub and the cities of Los Angeles, Kansas City, Colorado Springs and Wichita.

Since that time, we have grown dramatically. America West now operates a fleet of over 90 aircraft. The number of cities we serve has increased from three to sixty, and our operations now extend across the United States and into Canada. In November of last year, America West further expanded its national presence with the inauguration of Boeing 747 service to Honolulu from both our hubs in Phoenix and Las Vegas.

This phenomenal growth has brought America West to the point where we now provide service to more than 15 million customers annually. In the process of expanding our operation, we have created more than 12,000 jobs held by people who own stock in our company and participate in our employee profit-sharing plan.

Access By New Entrants At The High Density Airports

As the members of this Subcommittee are well aware, America West has consistently pointed out the deficiencies in the existing mechanisms for allocating slots at the high density airports and urged that a new approach be developed in order to assure competition in the markets served through these four airports.

In July 1987, America West filed a petition requesting the Department of Transportation (D.O.T.)/Federal Aviation

Administration (F.A.A.) to initiate a rulemaking proceeding to address the allocation of takeoff and landing slots at the Washington National and LaGuardia airports. In that petition, America West provided an overview of slot allocations at these two airports, pointing out that, historically, the D.O.T./F.A.A., in recognition of the important role that new entry can play in fostering and enhancing competition at these controlled airports, had historically taken steps to assure that there was in fact significant opportunity for new entry. America West also demonstrated that the wave of airline mergers during the period 1985-87 and the adverse effect of those mergers on the operation of the buy/sell rule, prevented any meaningful opportunity for new entry at either of these airports. Finally, America West pointed out that by July 1987, the S.F.A.R. No. 48 lottery, which was designed to be of benefit to new entrants but failed in its purpose because of its faulty design, had expired by its own terms, and that the Part 93 lotteries had never been a significant source of slots. Indeed, America West demonstrated, by means of a survey of all carriers operating at these airports, that there were absolutely no slots available for purchase <u>at any price</u> under the buy/sell program at either the Washington National or LaGuardia airports.

In the face of this substantial increase in concentration and the adverse consequences that have inevitably

flowed to the traveling public in the form of increased fares and reduced service, America West urged the D.O.T./F.A.A. to institute a rulemaking proceeding to reduce the concentration of slots in the hands of only a few carriers and, thereby, restore the competitive equilibrium in the market. Although the F.A.A. solicited comments on this proposal, it never instituted a rulemaking proceeding to explore the issues raised in America West's petition.

In the face of the failure by the F.A.A. to address these issues and concerned about the competitive implications of operation of the buy/sell program at the four high density airports, the Congress mandated, in Section 149 of Pub.L. 100-457, that the F.A.A. conduct a rulemaking proceeding to evaluate the manner in which that rule has operated and to consider the need for changes to that program. Included among the issues that the Congress required the F.A.A. to consider in the proceeding were: (1) the overall effect of the existing buy/sell regulation upon new entry or limited incumbents at the four slot-restricted airports; (2) the effects of the mergers and acquisitions upon the operation of the buy/sell program at these airports; (3) the competitive and fare implications of the utilization of slots at these airports for providing services to and from hub airports and on monopoly routes; (4) the effect of short-term leases of slots upon the ability of new entrants or limited incumbents to purchase slots at these

airports; (5) the effect of the use of air carrier slots by commuter operators upon entry by air carriers at these airports; and (6) the variation in prices paid for slots since adoption of the buy/sell program. In order to assure that any necessary changes to the rule be made expeditiously, the Congress required that the Administrator take final action in this proceeding, including the promulgation of any resulting final regulations, by the end of June 1989.

In response to the issues raised in the rulemaking proceeding subsequently instituted by the F.A.A., America West provided extensive comments demonstrating that the buy/sell program has not met the expressed goal of providing a meaningful mechanism for new entrants to obtain slots. In particular, America West showed that (1) the wave of mergers and acquisitions since adoption of the buy/sell rule had resulted in a substantial increase in slot concentration at these airports, (2) the buy/sell program had failed to provide a meaningful opportunity for new entrants to obtain slots, (3) the existing use-it-or-lose-it provisions were not sufficiently restrictive or properly applied to force incumbent carriers to make economic decisions as to their slot holdings, (4) operation of air carrier slots by commuter carriers further restricted access to these airports by new entrant and impacted incumbent air carriers, (5) establishment of a single pool for all slots would undermine service to smaller communities, result in even

higher concentration levels, and would create yet another windfall, this time to incumbent carriers who own commuter slots, and (6) the continued inability of new entrants to obtain slots at these airports will have serious, long-term, adverse consequences for the traveling public. In the face of the demonstrated failure of the buy/sell program to provide meaningful new entry at these airports, America West urged the F.A.A. to increase the required use percentages at all airports, to collect and publish price information pertaining to the sale of slots, and, most importantly, to conduct an administrative allocation of slots and subsequently create a "regulatory" aftermarket patterned on S.F.A.R. No. 48 to ensure new entry at the high density airports.

Specific Comments On The Airline Competition Equity Act of 1990

The Airline Competition Equity Act of 1990 makes three significant changes in the manner in which the D.O.T./F.A.A. regulates operations at four high density airports. First, the bill would require the F.A.A. Administrator to etablish a pool of slots of up to 5% of the existing number of slots at each airport to be allocated to new entrant carriers. Second, it would repeal the high density rule at each of these four airports, and would permit the reissuance of such a rule on an airport specific basis if, but only if, such

a rule is required in the interest of aviation safety and there is no alternative means for achieving comparable safety which has a less adverse effect upon competition in air transportation at such airport. Third, the bill would prohibit the purchase, sale, lease or other transfer of slots on or after July 12, 1990, except that one slot may be exchanged for another slot if there is no other consideration associated with the exchange.

Turning initially to the creation of a mechanism by which to allocate slots to new entrants, it is beyond question that the existing buy/sell mechanism has utterly failed in its mission to facilitate entry at the high density airports by new entrants. In fact, there is not, to the best of America West's knowledge, one new entrant that has been able to gain entry at either National or LaGuardia airports by purchasing slots, with the exception of Trump which purchased them in conjunction with the assets necessary to continue to operate what was the old Eastern Air Lines Shuttle. Indeed, America West recently attempted to purchase slots at National Airport at an extremely high price per slot, and was outbid by an established, grandfathered carrier that outbid America West by 50% per slot! In short, the buy/sell rule has impeded, not enhanced, new entry at these airports, and the creation of a special pool of slots for new entrants is long overdue. In the event that the F.A.A. can demonstrate that it is unable for safety reasons to

create a pool of slots of up to 5% over and above the existing number at a particular airport, it should create as large a pool of new slots as possible and conduct a reverse lottery to obtain the necessary additional slots to allocate up to 12 slots to each new entrant requesting that many slots at each airport.

Insofar as the sunset of the high density rule is concerned, the legislation does nothing more than require the F.A.A. to reevaluate at each high density airport whether the existing limitations at each airport are "required in the interest of aviation safety." The present controls at J.F.K. are only in effect for five hours of the day, the present hourly limitations at National appear to be significantly lower than can be justified on the basis of safety, and whatever congestion may exist at O'Hare is due in large measure to the scheduling practices of the two duopolists, United and American, who have developed large hubs at that airport. Moreover, there are several other airports, including, for example, Newark, Los Angeles International and Atlanta, that have a substantial number of daily operations that are presumably operated safely without the imposition of hourly limitations by the F.A.A. In any event, the bill does not require the elimination of the rule for eighteen months, which provides a substantial period of time for the F.A.A. to evaluate the existing rules and design, if necessary, alternative means for

addressing the safety issues so identified that are less anticompetitive than the existing program.

Finally, as to the elimination of the buy/sell rule, the simple fact of the matter is that examination of the transactions that have occurred pursuant to buy/sell authority reveals that, rather than being a mechanism by which new entrants could obtain slots, it has instead proven to be a system by which the grandfathered carriers who did not pay anything for their slots have reaped huge profits by the sale of their slots -- and not to new entrants but to other grandfathered carriers. There is absolutely no public policy reason for the continuation of such a rule which permits carriers to profit from the sale of rights which were given to the carrier by the federal government at no cost.

On the other hand, the present owners of the two shuttles, Trump and Pan Am, did not receive these slots on a grandfathered basis. Instead, these carriers purchased their slots, together with other associated physical assets, in order to provide these important public services, and it may well be in the public interest to continue to permit the sale of the slots and assets necessary to permit the continuation of such shuttle operations.

America West commends the sponsors of this legislation for taking this step to substantively improve the competitive situation at these four airports, and urges that consideration of the bill move forward with all deliberate speed.

BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

STATEMENT OF USAIR, INC.
IN SUPPORT OF THE
AIRLINE COMPETITION EQUITY ACT OF 1990

July 18, 1990

USAir supports the objectives of the Airline Competition Equity Act of 1990 and urges that this legislation be enacted into law.

While at first blush it might appear unusual that an incumbent slot holder would support the abolishment of the High Density Rule and the slot buy-sell rule, USAir believes that these rules reflect misplaced policy goals and fail to serve the public's interest in an expanded, competitive air transportation system. This is not a new position for USAir. Expressing USAir's opposition to the buy-sell rule in 1984, USAir's Chairman, Ed Colodny, wrote:

> "The U.S. has long had an integrated national air transportation network, which offers a superior range of services and options for American travelers. We cannot afford to have this fine system jeopardized by individual airports developing separate policies, or by arbitrary access restrictions at high-density airports, which do not benefit airline passengers."

The High Density Rule, which was adopted decades ago as a temporary expedient, has only served as poor camouflage for the limited progress that has been made in improving the air traffic

control system. By establishing a date certain for the abolishment of the High Density Rule, Congress would be creating a long needed incentive for the FAA and the industry to focus their energies on finding solutions to the air traffic control problems that plague not just the four High Density airports but many other airports serving major metropolitan areas in this country as well. There is nothing unique about the High Density airports that justifies the retention of slot constraints at these four airports. Moreover, the artificial capacity limits created by the High Density Rule are incompatible with the goals of deregulation. If the benefits of deregulation are to be maintained, the government and the industry must concentrate their efforts on ways to increase systemwide capacity.

In the limited entry environment of the regulated era, the slot system spawned by the High Density Rule could be managed by consensus and agreement. However, with deregulation that consensus quickly broke down as carriers rushed to take advantage of new competitive opportunities. As a substitute for consensus, the FAA adopted the buy-sell rule together with two initial small lotteries for new entrants. Most of those new entrants turned around and sold the slots they had received in the lotteries.

Rather than question the continued usefulness of government mandated capacity limitations, the proponents of the buy-sell rule simply accepted the constraints imposed by the High Density Rule and fell back on the argument that a market allocation method was the most efficient way to distribute limited

resources. Unfortunately, the so-called slot debate has centered on the mechanics of allocation and has failed to address the goals of capacity enhancement.

By removing the artificial restraints that gave rise to the need for a system of scarce resource allocation, this legislation affords opportunities for new entrants and at the same time allows incumbent carriers to provide service that is responsive to the public's need. Eliminating the side show of slot buying and selling refocuses the attention of the airlines on their job of serving their customers and the efforts of the government on improving the air traffic control system. The only proper limiting factor at any airport would be safety.

The Subcommittee will no doubt hear pleas to create special exceptions in the legislation for the benefit of certain carriers. As a carrier that links many small and medium size communities to the LaGuardia and Washington National airports, USAir could make its own case for special exceptions. However, USAir opposes any amendments that would preserve the High Density Rule for an indefinite period or retain elements of the buy-sell rule. The virtue of this legislation is its elegant simplicity and the undistorted message that it conveys. If it is to have its intended effect, this legislation should be passed as its sponsors wrote it.

USAir would be happy to respond to any questions the Subcommittee might have.

COPY

Metropolitan Washington Airports Authority

44 Canal Center Plaza
Alexandria, Virginia 22314

JUL 16 1990

The Honorable Wendell H. Ford
Chairman
Aviation Subcommittee
U.S. Senate
Washington, DC 20510

Re: S.2851, "Airline Competition Equity Act of 1990"

Dear Senator Ford:

The Metropolitan Washington Airports Authority (MWAA), the proprietor of Washington National Airport, respectfully offers its views on the referenced bill introduced by Senators McCain, Ford, Danforth, Hollings, Exon, Kassenbaum, and Kasten to alter the Federal rules applicable to commercial air carriers at high density traffic airports.

The bill, if enacted, would preclude aircraft operating rights or "slots" authorized under the Federal Aviation Administration's (FAA) High Density Rule (14 CFR §93.121 et seq.) from being bought or sold and require the Administrator of the FAA to develop a rule to provide slots for new entrant carriers at High Density Rule airports. The new entrant slots would be in addition to the existing slots and could add up to 5% to the existing slots at each high density airport. The proposed legislation would also cause the High Density Rule to sunset 18 months following the date of enactment of this legislation, thereby removing the limitations on aircraft activity at the high density airports. The FAA could impose new limitations at an individual airport if the rule is needed for safety and if no alternative means exists to meet the safety needs which could have less adverse impact on competition.

The proposed legislation would have a very significant impact upon Washington National Airport. If Congress were to enact it, Congress would be stepping back from the commitments that it made just four years ago in the Metropolitan Washington Airports Act of 1986. Washington National Airport has been the subject of slot restrictions since even before the formal High Density Rule took effect in 1969. At Washington National Airport, limitations on scheduled aircraft activity have been in effect since 1966. These limitations have become a fundamental or bedrock principle on which significant airport, air carrier, and community planning decisions have been based. MWAA, therefore, asks the Subcommittee to recognize that over its many years the Rule, at least at Washington National Airport, has become more than an air traffic management tool. It has been

embraced by the Airport proprietor (now the Metropolitan Washington Airports Authority and, until 1987, the FAA itself) as a means of maintaining rational limits on the usage of the Airport.

In the early 1980s, after two decades of extensive debate, regulatory and legislative proceedings, and litigation the respective roles of National and Dulles Airports were resolved in the Metropolitan Washington Airports Policy (46 Fed. Reg. 58036). The Federal Government, the air carrier industry, and the political jurisdictions within the Metropolitan Washington region reached a consensus on the fact that Washington National Airport, a geographically restricted, inner-city airport would remain open and viable, but would be limited. It was recognized that the Washington market is served by three fine airports and that the growth in air transportation in this region would occur at Dulles and at Baltimore-Washington International Airport. The High Density Rule was embraced by all concerned as a key device to control groundside congestion, inadequate terminal capacity, and aircraft noise impact on residential areas, and the distribution of aircraft activity among the three airports. These issues have been largely resolved or at least stabilized. The elimination or modification of the High Density Rule will reignite the debate over the future of Washington National Airport. Clearly, such an action by Congress will be viewed as a breach of previous Congressional assurances relating to the use of Washington National Airport.

It was Congress that seized upon the High Density Rule to forge the critical compromise to permit the transfer of the Airports from Federal control to the new Authority. MWAA requests the Subcommittee to remember that the limitations on aircraft activity at Washington National Airport are found not only in the High Density Rule, but in an Act of Congress itself, the Metropolitan Washington Airports Act of 1986 which authorized the transfer of the Airports. This extraordinary circumstance came about as a result of a carefully crafted compromise between interests of distant communities who feared that the new Airports Authority would reduce aircraft activity as a result of environmental pressures on the one hand, and the interests of the communities who feared that the new Authority would yield to pressures from air carriers to increase activity at the Airport, on the other. Ultimately, Congress, not the FAA, determined that neither would happen and forged the compromise which the proposed legislation would undo. The Metropolitan Washington Airports Act of 1986 provides:

> "(e)(1) High Density Rule - The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 CFR §93.121 et. seq.) at Washington National Airport on the date of the enactment of this title and may not decrease the number of such takeoffs and landings except for reasons of safety." P.L. 99-591 §6009(e)(1); 49 App. USC §2458(e)(1))

The 1986 legislation removed some very significant restrictions that had been imposed on Washington National Airport. For example, regulations limiting the type of aircraft that could use the Airport were repealed and the regulation of non-stop operations was changed to permit longer-haul flights. The most significant restriction was a limitation on passenger activity at Washington National Airport. Prior to the 1986 legislation, Washington National Airport was by Federal Regulations subject to a passenger cap of 16 million annual passengers (14 CFR §93.124(b), 46 Fed. Reg. 58049, November 27, 1981). The passenger cap was enforced by adjusting the number of hourly slots available to air carriers, i.e., slots under the High Density Rule would be reduced as needed to prevent annual passenger levels at Washington National Airport from exceeding 16 million. In no event could an hourly total of slots exceed 37. The Rule was critical in maintaining stability of activity at Washington National Airport and channeling the growth of air carrier activity to Dulles International Airport and to Baltimore, both of which had unused capacity. Over time, the effect of the passenger cap was expected to reduce slots to levels well below 37 per hour in order to maintain 16 million annual passengers, particularly as larger aircraft were introduced.

The air carrier industry opposed this passenger limitation and, as part of the compromise at the time of the Airports transfer, the passenger cap was eliminated by Congress in §6009(e)(2) of the Metropolitan Washington Airports Act of 1986. Section 6009(e)(2) states:

> "(2) Annual Passenger Limitations - The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport " (14 CFR §93.124) shall cease to be in effect on the date of the enactment of this title."

In return for eliminating the means to reduce National Airport activity and for giving up other limits on the use of National, the proponents of limiting National received assurances

that there would be no growth at National in terms of permitted scheduled air carrier activity during the hours that the High Density Rule applied. Therefore, the 37-per-hour limit of the regulation was also fixed by Federal law in §6009(e)(1) of the 1986 Act. Congress crafted this compromise to end the otherwise endless debate and promote stability at this region's airports.

The 1986 Transfer Act has worked. Since the Airports' transfer, MWAA has gone forward to fulfill its mission to rehabilitate National Airport and to expand Washington Dulles. Extensive Master Plans have been developed. A $1.5 billion Capital Development Program is being implemented. The Airports are being operated without appropriated funds; a half-billion dollars in bonds have already been issued and major improvements are underway at both Airports. Underlying all this are the necessary assumptions that aircraft activity at Washington National Airport would remain limited as agreed upon by Congress and as fostered by the compromise in the Metropolitan Washington Airports Act of 1986.

At this time, MWAA requests that the Committee recognize that a change to, or repeal of, the High Density Rule has far more significance to Washington National Airport and its environs than simply a change in a means of managing air traffic control. Neither is the Rule a safety rule; to our knowledge the hourly limits at Washington National have never been justified as a safety measure. In the 1986 Act, Congress recognized that the Rule has far broader significance. Fundamental decisions have been made in reliance upon that Rule. At least as far as Washington National Airport is concerned, the Metropolitan Washington Airports Authority believes that Congress must maintain the existing limitations on aircraft activity which Congress provided in the Metropolitan Washington Airports Act of 1986.

We appreciate the opportunity to express our views on this very important matter and would be pleased to discuss them with you in greater detail. Thank you for your consideration.

Respectfully,

James A. Wilding
General Manager

cc: Sam Whitehorn, Majority Professional Staff Member
Carol J. Carmody, Majority Professional Staff Member
John Timmons, Minority Professional Staff Member

City of Chicago
Richard M. Daley, Mayor

Department of Aviation

Jay R. Franke
Commissioner

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July 17, 1990

The Honorable Wendell H. Ford
Chairman, Subcommittee on Aviation
Commerce, Science, and Transportation Committee
SH-428 Hart SOB
Washington, D.C. 20510

Dear Chairman Ford:

The City of Chicago welcomes the High Density Rule (HDR) initiatives proposed in S.2851. We are particularly encouraged by the provision that would rescind the HDR eighteen months after the bill's enactment. We also support a five percent increase in the total number of slots for creation of a new entrant carrier pool. Furthermore, we could support elimination of the buy-sell rule if a constructive modification were made to protect domestic service levels. This letter is offered for inclusion in the Subcommittee's hearing record on the HDR.

We believe the HDR has artifically controlled demand and has evolved into a regulation which conceals and ignores the most visible problems of congestion and delay at Chicago O'Hare International Airport. The HDR has dampened complaints and pressure for air traffic control (ATC) technical improvements and allowed chronic understaffing at the O'Hare Air Traffic Control Tower (ATCT) and the Aurora Center to go unresolved. Removal of the HDR will finally prompt long overdue ATC improvements at all HDR airports. While we fully support removal of the HDR, we also urge Congress to stipulate concurrently that the FAA formulate and implement a program with defined timetables for enhancing ATC functions at HDR airports prior to the effective date for repealing this archaic rule.

The City also supports the proposed five percent (5%) increase in the number of slots permitted under the HDR for creation of a slot pool for new entrant carriers. Such a provision should enhance competitive opportunities. Furthermore, previous studies conducted by the City indicate that O'Hare has sufficient capacity to accommodate more flights than the HDR presently permits.

Finally, we would support elimination of the buy-sell rule if modified to guard against reductions in domestic service levels. Under the current rule, slots for international service must be withdrawn from domestic operators if the international slot request for a particular time period cannot be accommodated from the available slot pool. To compensate for such lost slots, domestic operators must either purchase or lease slots to avoid disruption of service on domestic routes. Buying or leasing "replacement" slots would no longer be permitted if the buy-sell rule were eliminated, and we are concerned about the adverse effect that would have on the domestic service options of Chicago passengers.

Should the buy-sell rule be eliminated, domestic carriers should not be required to surrender slots for international service. Protecting domestic service levels while accommodating international service could be achieved by either assigning international slots from the "new entrant pool" or by creating a new slot pool for international service. Likewise, slot lease arrangements entered into prior to the effective date of the bill should be grandfathered to permit lease renewal after the buy-sell rule is removed.

DEPARTMENT OF AVIATION

We applaud the spirit and intent of S.2851. We believe that elimination of the HDR will offer long-term benefits to Chicago by no longer restricting the manner in which the marketplace uses O'Hare's capacity, allowing for a better utilization of our capacity as a result.

Sincerely,

Jay R. Franke
Commissioner

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July 18, 1990

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MARY MARGARET WHIPPLE

The Honorable Wendell H. Ford
United States Senate
Chairman, Subcommittee on Aviation
Senate Committee on Commerce,
Science and Transportation
Room SH-428
Washington, D.C. 20510

RE: S.2851. "Airline Competition Equity Act of 1990"

Dear Chairman Ford:

The Arlington County Board respectfully offers its views on the referenced bill introduced by Senator McCain, with cosponsorship by yourself and Senators Ford, Danforth, Hollings, Kassebaum, and Kasten, to alter the Federal rules applicable to commercial air carrier operations at high density traffic airports.

Our concern with the proposed bill is not with the provision prohibiting the purchase or sale of slots authorized under the FAA's High Density Rule, but focuses on the provisions that would expand available slots at Washington National Airport and other high density traffic airports by up to 5 percent and cause the High Density Rule to sunset within 18 months. In the case of National Airport, the short-term effect would be to increase commercial air carrier traffic during the daytime hours by 25 to 30 flights per day, and the sunset provision could be expected to produce much higher traffic levels on a sustained basis.

When control of Washington National Airport was transferred from the FAA to the Metropolitan Washington Airports Authority, the status of National as a "high density airport" was recognized, and the "High Density Rule" was established as the primary mechanism to maintain a stable level of activity which would preserve the economic viability of the airport and protect the surrounding communities from the adverse safety and environmental effects of increased operations.

Prior to the transfer legislation, a passenger cap of 16 million per year was in effect at National Airport. This cap was enforced by reducing the number of hourly slots as required so as not to exceed the 16 million annual passenger limit. Permanent reductions in the level of hourly slots were expected in the future, if and when larger aircraft were allowed to operate at National, so as not to exceed the passenger cap.

The Metropolitan Washington Airports Act of 1986 fixed the number of available slots for air carriers at 37 per hour. This slot restriction was the same as had been employed by the FAA at National Airport since 1981, and reflected a balance between: 1) the interest of air carriers who wanted increased capacity and 2) the limitations of air traffic control and the environmental and safety concerns of surrounding communities, both of which argued for stability in flight operations. The status of the slot restriction became paramount in 1986 when the passenger cap was eliminated under the transfer legislation.

The expansion of available slots or the elimination of the slot restrictions altogether are antithetical to the spirit and intent of the transfer legislation. The clear intent of the transfer was to accomplish the refurbishment of National Airport without increasing its level of flight operations beyond that already recognized by the High Density Rule. There was to be no growth in scheduled air carrier activity during the 15-hour period encompassed by the Rule.

The capital development program underway at National Airport was designed around the High Density Rule slot limitations and the gate availability is fixed. The focus of the program is to achieve substantial improvement in the physical facilities and level and quality of service provided to passengers. An increase in slot availability imposes immediate demands for increased gate access, aircraft parking and service facilities and patron parking. In the face of increased flight operations beyond current slot levels, the quality of service can only deteriorate.

The Airports Authority has spent considerable effort over the past two years to develop a noise compatibility program for National Airport that meets the requirements of FAR Part 150. This program has been through the public hearing and local government review process and is being readied for submittal to the FAA. The Arlington County Board has supported the Part 150 process and has worked with the Airports Authority to achieve program elements offering meaningful noise abatement during the hours that the High Density Rule is in effect. The preservation of the existing slot restrictions is critical to the success of the noise abatement program at National Airport, because the fixed capacity in terms of flight operations, when combined with an increased proportion of quieter Stage III aircraft in the fleet mix, produces a significant shrinkage in noise contours at the specified 65, 70 and 75 Ldn levels. If slots are expanded or eliminated altogether, the resultant growth in air traffic will counteract the benefits of quieter aircraft in the fleet mix, and the shrinkage in noise contours will not materialize. One only has to look at Dulles International Airport, where there is no capacity limit, to see the effects on noise exposure. The noise contours identified under the Part 150 study for Dulles are projected to expand because the noise mitigation achieved by the increased use of quieter aircraft will be overwhelmed by the increase in flight operations.

The Airline Competition Equity Act of 1990 addresses the problem of slot access in the wrong way. Concern with access to air markets for new entrants should focus on mechanisms to allocate available slots on a truly competitive basis, and not take the form of this bill which strikes down the cornerstone of the agreement for National's future. Expansion of slots or their elimination altogether is an expedient that will not stand the test of time or community acceptance. The competitive nature and entrepreneurial drive of the air travel industry will ensure a continued supply of prospective new entrants, and there is no way, within the physical and operational constraints of National Airport, to satisfy this demand without degrading the level and quality of service to air passengers. The increase in air traffic this bill would generate imposes unacceptable consequences on Arlington and the other jurisdictions that bear the brunt of the noise and air pollution associated with commercial air carrier operations at National Airport.

We appreciate the opportunity to state our views on this bill and would be pleased to discuss them with you in detail. Thank you for your consideration.

Sincerely,

Albert C. Eisenberg
Chairman

metropolitan washington
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July 18, 1990

Honorable Wendell H. Ford
United States Senate
Chairman, Subcommittee on Aviation
Senate Committee on Commerce,
Science and Transportation
Room SH-428
Washington, D.C. 20510

SUBJECT: S.2851 Airline Competition Equity Act of 1990

Dear Chairman Ford:

We are writing to you in our capacities as the Chair of the Board of Directors of the Metropolitan Washington Council of Governments (COG), and Chair of the COG Committee on Noise Abatement at National and Dulles Airports (CONANDA), and Mayor of the City of Alexandria and member of the COG Board, concerning the referenced pending bill before your Subcommittee.

S.2851 has two main features. It would prohibit the purchase, sale or lease of operating rights or "slots" by commercial air carriers subsequent to July 12, 1990. The second objective is the provision of additional slots for new entrant carriers at High Density Rule airports. The Federal Aviation Administrator would be required to make a rule establishing a pool of slots for such carriers within 60 days of enactment of the legislation. This new policy would permit up to a 5 percent increase over existing slots and would terminate the High Density Rule completely 18 months after of enactment. Finally, of most importance to the Washington metropolitan region, the bill would amend the Metropolitan Washington Airports Act of 1986 to accommodate this new policy.

The local governments in COG have an abiding interest in maintaining the existing statutory limit of 37 commercial air carrier operations at Washington National Airport. The Senators' bill would change this policy; if enacted it would breach the solemn promises on which the legislation transferring National and Dulles Airports to the Metropolitan Washington Airports Authority (MWAA) was founded.

A short historical perspective might best establish why we have such strong objection to that part of the bill that would alter this operational level at National.

We realize it is no surprise to you and your colleagues on the Subcommittee that the local governments adjacent to National and those impacted by its flight patterns have long sought to curtail commercial operations there. But, individually and as a metropolitan community, we have attempted to be constructive in these efforts. To this end, we supported through COG, the undertaking of airport systems planning for the three commercial facilities that service the Washington region - National, Dulles and Baltimore-Washington International Airports. This systems planning has been done for approximately 15 years with planning grants supported from the Federal Aviation Administration (FAA). It has supplied federal, state and local officials much of the information and alternative development choices for meeting the air transportation needs of both the Washington and Baltimore regions. Most relevant here, however, these planning efforts clearly established that National Airport could and should have operational limits, and more emphasis should be placed on expanding facilities and operations at Dulles and BWI.

Moreover, the need to reduce or at the very least stabilize the growth of operations at National were verified in cooperative efforts by COG and the FAA to examine options to curtail noise at National and later, by COG's Committee on Noise Abatement at National and Dulles Airports (CONANDA). CONANDA is recognized by MWAA as the official regional advisory body on noise reduction matters.

These system and noise abatement planning efforts manifested themselves in the evolution of FAA policy on National which, among other things, established operational limits on the number of commercial operations per hour and passenger caps at National. The slot limit at National, therefore, predated the imposition of the high density rule and its origin was based on traffic management.

In short, the slot rule as applied to National has been deemed a surrogate for managing operations at the Airport; it provided a significant deterrent to unbridled growth. Accordingly, this rule was pivotal to the consensus among federal, state, regional, and local interests in formulating the legislation that transferred National and Dulles to MWAA. As you know, it was so vital to the accord that it was written into the transfer legislation approved by your Subcommittee and enacted by Congress. We believed this commitment was indelible. It represented a balancing of interests and led to a viable compromise.

The level of operations permitted under the rule was larger than we preferred, especially in view of the legislative repeal in the transfer Act of the FAA rule that put a passenger cap at National. But, it did establish strictures on operations in prime travel times, and further provided the MWAA with the statutory authority for restricting operations during late night hours.

A compromise usually does not please everyone. In such negotiations, one must forego some special interests to achieve what is in the general interest. We also believe fairness requires that the rules should not be changed afterward. Therefore, S.2581 should not be enacted without exempting National Airport from the ambit of its operations.

One final point, Mr. Chairman, we have already indicated the intense interest COG and its noise committee have in finding ways to reduce noise at National. We are seeking solutions that recognize National as an integral part of the airport system that serves the National Capital region. It has been a difficult challenge to find ways to serve the disparate interests in the community, but we have made some progress, and working cooperatively with MWAA we intend to make much more. Unfortunately, this bill would thwart these efforts. If one thing has become clear in our noise reduction activities it is this single fact. The frequency of the noise incursion is as important as the level of the noise itself. Thus, more slots equate to more noise. And, the impacted segments of our regional community have said over and over again, "enough is enough!"

In closing, Mr. Chairman, please accept our thanks for being given the opportunity to express our views on this critically important issue.

Sincerely,

Betty Ann Kane
Council of the District of Columbia
Chair, COG Board of Directors
Chair, Committee on Noise Abatement
at National and Dulles Airports

James P. Moran
Mayor, City of Alexandria
Member, COG Board of Directors

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Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
TRANSPORTATION
TREASURY—POSTAL SERVICE—GENERAL GOVERNMENT
SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES
COMMISSION ON SECURITY AND COOPERATION IN EUROPE

July 18, 1990

The Honorable Wendell H. Ford
Chairman
Subcommittee on Aviation
426 Hart SOB
Washington, D.C. 20510

Dear Chairman Ford:

I am writing to offer my comments on S. 2851, which is currently under consideration by your subcommittee. I would appreciate your including my comments in the record of testimony received by your subcommittee today during hearings on this legislation.

Washington National Airport, which would be directly affected by S. 2851, is located within the 10th Congressional District of Virginia, which I represent. I am opposed to S. 2851 because of the negative impact its provisions would have on operations at National Airport, on communities surrounding National Airport and on the flying public. I urge the careful consideration of my concerns by your subcommittee.

CONGRESSIONAL AGREEMENT ON AIRPORT TRANSFER LEGISLATION

In 1986 Congress approved and President Reagan signed legislation that transferred control of Washington National and Washington Dulles International airports to a regional operating authority. In transferring control of the two airports, Congress also agreed that air carrier operations at National would be limited to the level established by the Metropolitan Washington Airports Policy in 1981 at 37 per hour. S. 2851 would alter that agreement by removing the flight limitation.

Any change in the Airports Policy, one of the fundamental provisions of the airports transfer agreement, is completely unacceptable and would break faith with the people of the Washington metropolitan area who, through the Metropolitan Washington Airports Authority, have undertaken extensive efforts to improve safety and capacity at Washington's airports.

SAFETY

The Federal Aviation Administration's High Density Rule limits the number of airline, commuter and general aviation

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operations at four U.S. airports, including Washington National. The rule was originally established to regulate air traffic for both efficiency and safety reasons. At Washington National, permitted operations were set at a level of 40 per hour; however, as a result of the Metropolitan Washington Airports Policy issued in 1981, that figure was reduced to 37 per hour.

While, at current levels of operations, National is not considered as unsafe, it is regularly ranked as one of the least safe airports in the country. The reasons for safety concerns at National are many: noise restrictions and development surrounding the airport limit aircraft maneuverability on take-off, the main runway is among the shortest in the nation and the air space surrounding the airport is congested.

Increasing the number of operations at National, even if only 5 percent, could seriously affect safety of airline operations.

Air traffic controllers at National are now required to handle air traffic from nine small airports as well as Washington Dulles International, Baltimore-Washington International and Andrews Air Force Base as it passes through National's air space. Additional operations at National will only put more strain on the air traffic control system there.

Many of the people affected by safety at National are my constituents and their families; members of Congress and their families; visitors and their families. The risk of making National a more dangerous airport, even if small, is not outweighed by the economic concerns S. 2851 is designed to address. We should not be trading economic advantages for safety risks.

NOISE

In effect, the High Density Rule serves to place a ceiling on noise at the airports it encompasses. At Washington National Airport, noise has been a major concern of surrounding communities and neighborhoods. Thousands of families in Arlington, Fairfax and Loudoun counties and the city of Alexandria are affected by noise at National. The Metropolitan Washington Airports Policy limiting operations to 37 per hour was influenced by noise concerns as well as safety concerns.

The Metropolitan Washington Airports Authority (MWAA), which operates National, has worked hard to reduce the impact of noise

on communities surrounding National Airport and progress has been made.

Any increase in operations at the airport would cause an increase in noise and a concomitant disruption to the quality of life of citizens who live in communities surrounding the airport. Congress must consider the impact of its actions on all people. Noise at National is already at intolerable levels. It affects everyone who lives in the area. S. 2851 would cause noise at National to increase and that is totally unacceptable to the community which surrounds National.

INCONVENIENCE TO THE FLYING PUBLIC

Another effect of the High Density Rule is to contain air traffic operations within a level that can effectively be handled by the airport. The limit on flight operations helps control traffic congestion on airport grounds, crowds in terminal buildings, baggage delays as well as flight delays.

The U.S. Department of Transportation has indicated that because Washington National has only one major runway, a substantial increase in jet operations could quickly increase operating delays. While those delays will directly affect passengers using National, air passengers throughout the country could be affected by the system widedelays as well.

Lifting the limit on operations at National also would cause inconvenience for travellers using the airport. Traffic jams would increase. Baggage delays would increase. The terminals would become more crowded and lines at airline counters would get longer. National is already operating at capacity and further strain on the airport facilities would only be counterproductive.

CONCLUSION

Mr. Chairman, in conclusion, while I cannot comment on the impact of S. 2851 on other areas of the country, it is clear that this legislation would have a deleterious impact on airport safety, on citizens in the surrounding communities of National Airport and on the flying public. The people of these communities do not want a return to an aluminum sky policy. I encourage you, in the strongest possible terms, to exempt Washington National Airport from the provisions of S. 2851.

The Honorable Wendell Ford
July 18, 1990
Page 4

Thank you for your consideration of these views and for including them in the hearing record on this issue.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:en

This is very important.

Thank you

Maryland Department of Transportation
The Secretary's Office

William Donald Schaefer
Governor
Richard H. Trainor
Secretary
Stephen G. Zentz
Deputy Secretary

AIRBORNE EXPRESS

July 19, 1990

The Honorable Wendell H. Ford
Chairman
Senate Aviation Subcommittee of the
Commerce, Science, and Transportation Committee
SD -508 Dirksen Senate Office Building
Washington, DC 20510-6125

Dear Mr. Chairman:

State of Maryland Governor William Donald Schaefer asked that I write to express Maryland's strong concern with respect to legislation now pending before the Subcommittee, S.2851, that would fundamentally change federal aeronautical rules applicable to commercial air carrier operations at the Nation's four so-called "high density airports," i.e., Chicago O'Hare, New York's Kennedy and LaGuardia Airports, and Washington National Airport. Maryland takes no position on the proposed elimination of the "buy-sell rule" mechanism as a vehicle for reallocating slots at these four airports, and limits its comments to the high-density rule per se only with respect to its application at Washington National.

As you know, Congress and a succession of transportation Secretaries labored for a number of years to frame a comprehensive policy to guide future development of Washington National and Washington Dulles International Airports. The Final Rule establishing this policy, published in the November 27, 1981 Federal Register, further finds that although "the U.S. DOT does not establish policy for BWI, it recognizes that actions taken at National and Dulles may influence operations at BWI." As such, the policy embraces State of Maryland owned and operated Baltimore/Washington International Airport (BWI) as an integral part of the system of commercial air carrier airports serving the greater Washington area. Drawing upon the work of Neil Goldschmidt and others, Drew Lewis achieved a delicate balance of competing interests in framing the 1981 policy, elements of which today still guide operations and development at National and Dulles, and by implication, at BWI as well.

As you will further recall, Maryland was deeply concerned that efforts to transfer the two metropolitan Washington airports to a regional airports authority might serve to disturb that delicate balance of competing interests. The legislation which ultimately

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transferred National and Dulles nevertheless abandoned the 16 million annual passenger ceiling, as well as the "trigger mechanism" designed to keep traffic below the 16 million passenger ceiling. Then Transportation Secretary Dole testified before the Senate Aviation Subcommittee on June 26, 1985 to the effect that these operational controls were no longer necessary for environmental purposes because the enabling legislation, by freezing air carrier slots to 37 per hour at National, offered residents living proximate to National and its flight tracks a "reasonable substitute" for the passenger cap.

Now, just a short four years later, the Congress is being called upon to revisit an issue that all of us believed was "settled public policy," and Maryland's worst fears of five years ago appear to be today's ultimate specter for tens of thousands of Maryland citizens who are burdened with the noise associated with National's continuing over-utilization. Maryland therefore joins our colleagues at the Metropolitan Washington Airports Authority in expressing the strongly held view that Congress should maintain the existing limitations on aircraft activity at National which Congress wisely provided in enacting the Metropolitan Washington Airports Act of 1986, and not retreat from that commitment. Metropolitan Washington Airports General Manager Jim Wilding and his able staff have made a number of important decisions concerning the capital redevelopment of National, and many of these decisions pivot off the 1986 Act's freeze on National's air carrier slots at 37 per hour, and the Airports Authority Board of Directors has likewise made important policy determinations predicated on what we all thought was a bedrock principle that would ensure a stable planning and operational environment.

Thank you very much for this opportunity to express the State of Maryland's perspective on this pending legislation. I would be pleased to meet with you to elaborate on our views.

Sincerely,

Richard H. Trainor
Secretary

RHT:ldh

JUL 27 PM 12 58

THE TRUMP SHUTTLE

July 25, 1990

RICHARD F. COZZI
PRESIDENT &
CHIEF OPERATING OFFICER

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Senator Wendell H. Ford, Chairman
Senate Subcommittee on Aviation
173A Russell Senate Office Building
Washington, D.C. 20510-1701

Dear Mr. Chairman:

Thank you for the kind reception you gave to me and other witnesses at the hearing before the Subcommittee on Wednesday, July 18. It occurs to me, however, that you and your colleagues might benefit from some further comment on certain matters raised at the session.

The first matter is the subject of extra sections performed by the two shuttles. While Part 93 of the FAA's Regulations allows any air carrier to operate extra sections of a flight for which it has a slot reservation at any High Density Airport[1] this is not some bonanza of resources available for expansion of airport capacity. Such flights

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[1] The authority for scheduled air carriers to conduct flights of extra sections to or from the LaGuardia, Newark and O'Hare Airports is especially needed for "shuttle service." ... Since the basic element of the "shuttle service," assured seating, has received wide public acceptance it is in the public interest to provide to the extent possible for such service at the other airports involved. The flexibility needed for the shuttle flights and other extra sections of scheduled air carriers which has been provided at Washington National Airport should also be provided at the LaGuardia, Newark and O'Hare Airports. Any additional delay resulting from this increase in operations is more than offset by the benefits to be derived therefrom by the travelling public. Accordingly, the rule as amended herein permits a scheduled air carrier to operate extra sections at those airports as well as the Washington National Airport, without regard to the limitation upon the number of hourly IFR reservations.
(FAA Amendment 93-15, adopted February 24, 1969, 34 F.R. 2603, February 26, 1969.)

cannot be held out as separately scheduled stand-alone operations. Under Civil Aeronautics Board and Federal Aviation Administration precedents, a true extra section must meet three criteria:

1. It must not be operated on a regularly scheduled basis;

2. It must serve overflow passengers generated by a regularly scheduled flight and;

3. It must operate in close time proximity to the regularly scheduled flight and must serve the same points.

Extra sections are thus useful only as adjuncts to the shuttle services, which routinely maintain standby equipment. Moreover, since operations are only constrained by slots in bad weather IFR conditions, the number of extra sections operated in such conditions is comparatively small.

Reliable extra section flights are vital, however, to continuation of the unique service provided by the shuttles: guaranteed seats without the need for advance reservations. Absent such service, shuttle passengers would gravitate to alternative means of surface transportation.

Another item raised at the hearing is the concern expressed with regard to the 65 percent usage requirement mandated by Section 93.227 of the Regulations -- a level perceived by some at the hearing as unfairly low. In substantial part, however, this level was determined in consideration of the prevalence of schedules which do not operate on weekends when traffic demand is low. It was determined that such a day-of-the-week adjustment of service to market demand should not force a carrier into the risk of losing slots for a useful five-day operation or, as the alternative, operating uneconomic weekend services so as to meet the mandatory service level. Since 5/7ths amounts to 71 percent, it might appear that the usage requirement reasonably could be increased to a 70 percent level. However, cancellations caused by weather conditions and mechanical failures are counted as non-use so that a 65 percent performance requirement simply cannot be increased by much.

In closing, I would stress again how dangerous to the core operation of a shuttle the proposals contained in S. 2851 are. As now written, the elimination of the buy-sell rule and the high density rule would result in significant and disturbing service disruptions. The resulting delays and potentially unsafe taxiways congestion would likely drive consumers away from airports to surface transportation. These changes would render the operation of a safe and efficient shuttle service in the Northeast corridor an impossibility which would be to the detriment to the travelling public.

Sincerely,

Richard F. Cozzi

Richard F. Cozzi
President
& Chief Operating Officer

COMMONWEALTH of VIRGINIA

Lawrence Douglas Wilder
Governor

Office of the Governor
Richmond 23219

July 26, 1990

The Honorable Wendell H. Ford
Chairman, Aviation Subcommittee
United States Senate
Washington, D.C. 20510

Dear Senator Ford:

I understand that one of the consequences of proposed S.2851 would be to increase the number of daily flights into Washington National Airport by adding to the permissible number of slots immediately and phasing out the slot limitation over time.

The Commonwealth strongly opposes this proposal. Noise, congestion, and the other by-products of a busy airport already are a substantial burden on National's residential neighbors. This proposal would destroy the delicate compromise established at the time the Washington Metropolitan Airports Authority was created in 1986 to provide for the orderly growth of the airport while limiting its impact on the area.

In 1986 local governments in the area argued that a strict curfew or overall passenger ceiling should be imposed, but were convinced that the limitation on the number of flights per hour was the most practical way to assure that National's intrusion into people's homes would be minimized. In fact, the slot limitation at National had worked well since 1966. When the Airports Authority was created twenty years later, Congress specifically fixed by statute the then existing number of takeoffs and landings.

Based on these assumptions about the number of aircraft operations permitted, Washington National Airport has begun a major rehabilitation plan. A $1.5 billion Capital Development Plan is being implemented there and at Dulles International Airport. This plan is based on the assumption that aircraft activity at Washington National would remain limited as agreed in 1986.

804 786-2211 TDD 371-8015

Washington National and Dulles International Airports are important elements of the vibrant economy of the Capital region. But these airports and the thousands of citizens who live and work in the shadow of these airports must co-exist. The Authority's plans, especially the limitation on the number of flights per hour coming into and out of Washington National, are essential to achieving this delicate balance.

Thank you for your attention to the views of the Commonwealth on this matter.

With best wishes, I am

Very truly yours,

Lawrence Douglas Wilder

cc: The Honorable Charles S. Robb
The Honorable John W. Warner
The Honorable A. Linwood Holton
Chairman, Metropolitan Washington Airports Authority
The Honorable John G. Milliken
Secretary of Transportation